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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914

No. 95

THE CLEVELAND AND PITTSBURG RAILROAD COMPANY, PENNSYLVANIA COMPANY, THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, AND THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, PLAINTIFFS IN ERROR,

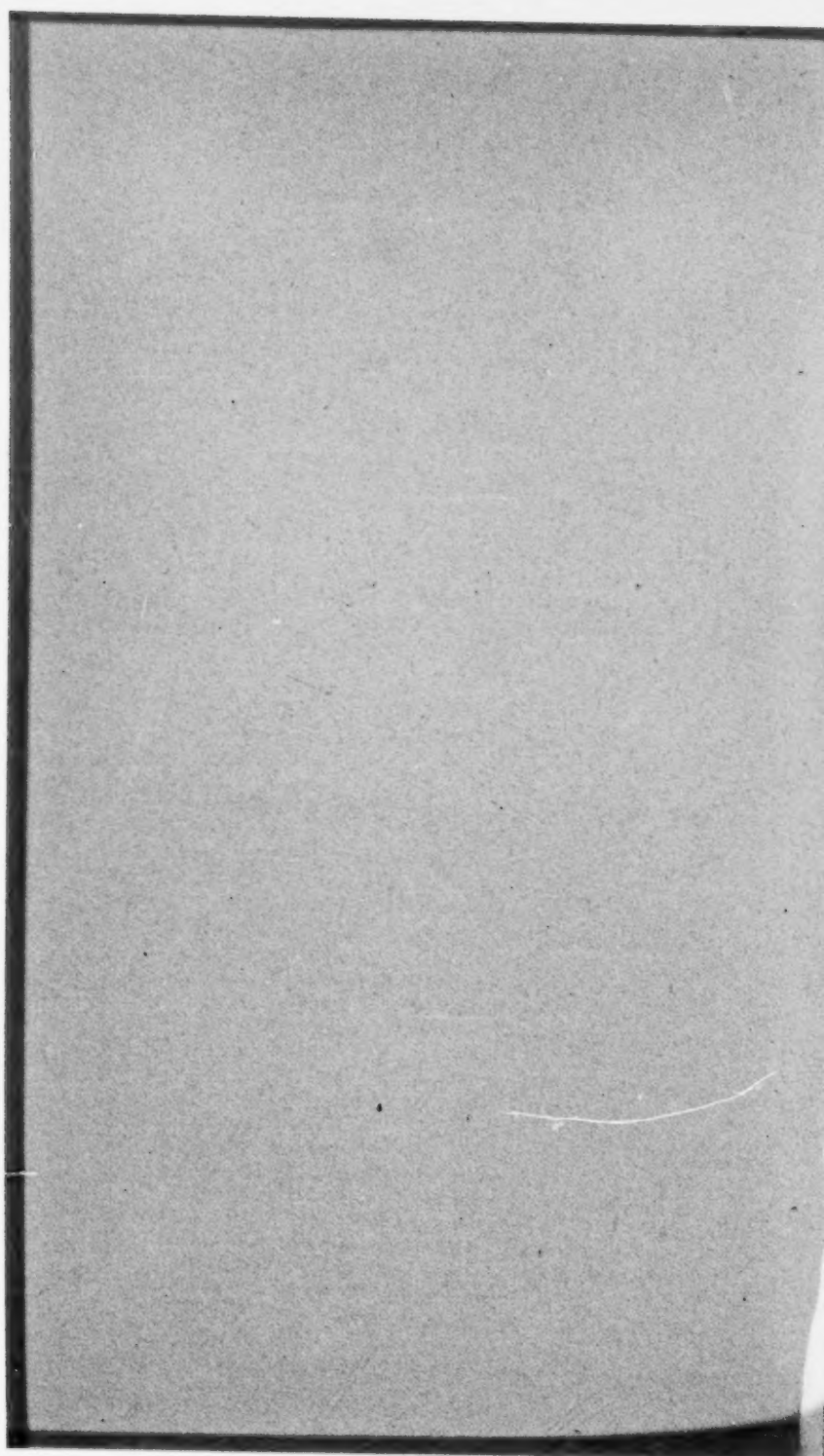
vs.

THE CITY OF CLEVELAND, OHIO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

FILED JANUARY 13, 1913.

(23,497)



(23,497)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 422.

THE CLEVELAND AND PITTSBURG RAILROAD COMPANY, PENNSYLVANIA COMPANY, THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, AND THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, PLAINTIFFS IN ERROR,

vs.

THE CITY OF CLEVELAND, OHIO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

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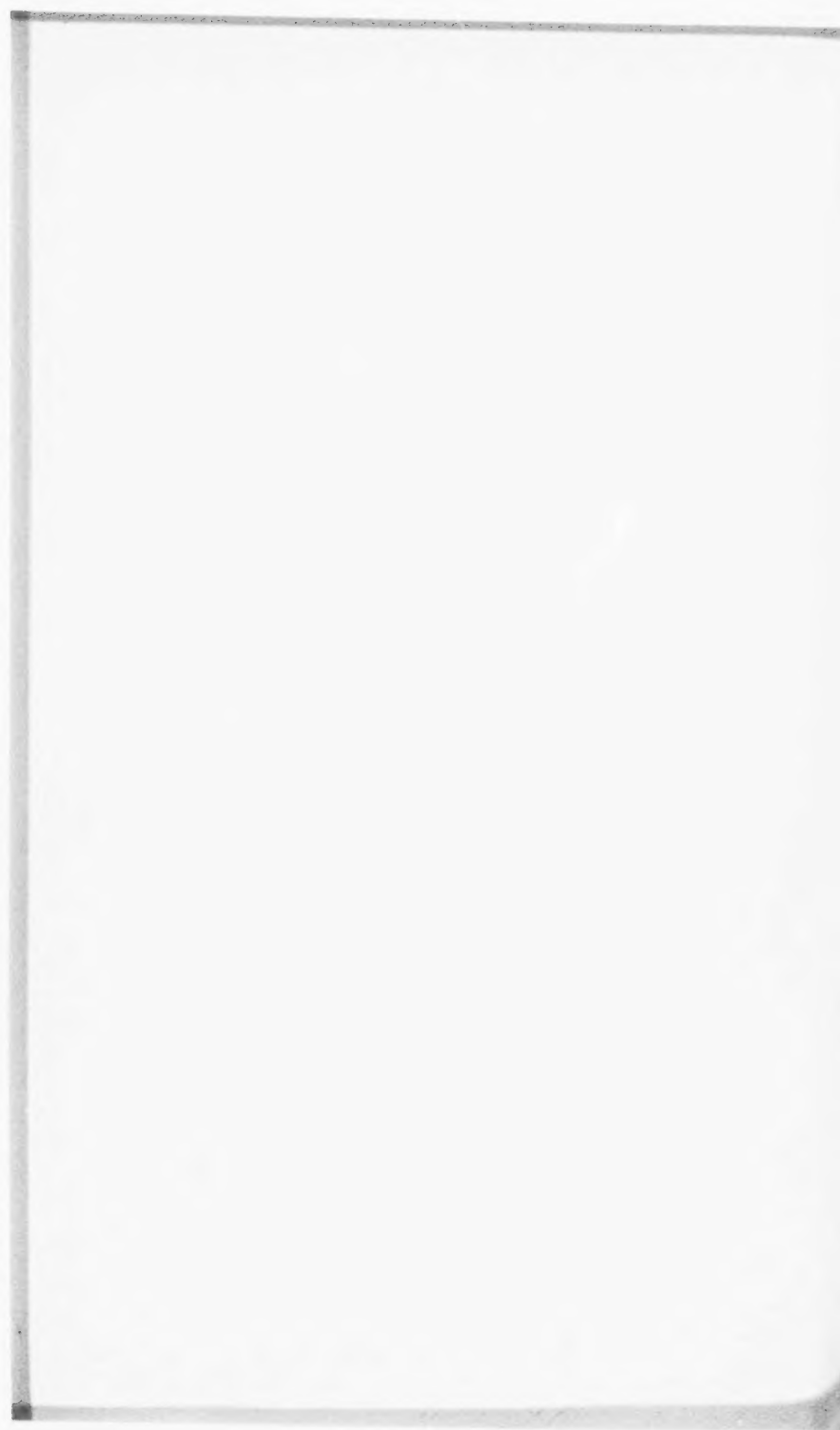
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1 In the Supreme Court of the State of Ohio.

No. —.

THE CLEVELAND & PITTSBURG RAILROAD COMPANY and the PENNSYLVANIA COMPANY, Plaintiffs in Error,

VS.

THE CITY OF CLEVELAND, THE CLEVELAND, CINCINNATI, CHICAGO & St. Louis Ry. Company, and The Lake Shore & Michigan Southern Railway Company, Defendants in Error.

Error to the Circuit Court of Cuyahoga County.

Petition in Error.

Plaintiffs in error say that at the January term, A. D. 1909, in the Court of Common Pleas of Cuyahoga County, Ohio, the defendant in error, the City of Cleveland recovered a judgment by the consideration of said court against the plaintiffs in error, The Cleveland & Pittsburg Railroad Company and the Pennsylvania Company in a certain cause, wherein the defendant in error, the City of Cleveland was plaintiff, and the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, The Lake Shore & Michigan Southern Railway Company, The Cleveland & Pittsburg Railroad Company and the Pennsylvania Company were defendants; and thereupon these plaintiffs in error commenced an action in error in the Circuit Court of said county to obtain a reversal of said judgment, and by the consideration of said Circuit Court at the September term, A. D. 1909 thereof, the defendant in error, the City of Cleveland recovered a judgment against the plaintiffs in error in said action, the judgment of the Court of Common Pleas being affirmed.

2 The original pleadings between the parties and the papers, and the full record of said case, including the bill of exceptions allowed therein, together with duly certified copy of the docket and journal entries in said Court of Common Pleas and in said Circuit Court in said action, are hereto attached and filed herewith and made part of this petition in error.

These plaintiffs in error aver that there is error in said record and proceedings in said Court of Common Pleas and said Circuit Court, as follows, to-wit:

1. That the Common Pleas Court erred in sustaining the motion filed by the defendant, the City of Cleveland, to vacate a judgment and order heretofore entered in this case, on the 21st day of December, 1899, reading as follows, to-wit:

"December 21, 1899 dismissed for want of prosecution at plaintiff's costs, and judgment rendered."

2. That the Court of Common Pleas erred in proceeding to the trial of said action for the reason that it had no jurisdiction of

these plaintiffs in error, or of the defendants in error, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company and The Lake Shore & Michigan Southern Railway Company or of the subject matter.

3. That the Court of Common Pleas erred in the admission of evidence offered by the defendant in error, the City of Cleveland, plaintiff in the Court of Common Pleas, in the trial of said cause over the objection of these plaintiffs in error, defendants in the trial in the Court of Common Pleas, to which rulings these plaintiffs in error at the time, excepted.

4. That the Court of Common Pleas erred in the exclusion of evidence offered by these plaintiffs in error, defendants in the trial in the Common Pleas Court, on the trial of said cause, to which rulings the plaintiffs in error at the time excepted.

5. That the finding and judgment of the Court of Common Pleas and the Circuit Court are contrary to the law and the evidence.

6. That the findings and judgments of said Court of Common Pleas and said Circuit Court should have been for these plaintiffs in error, defendants in the Court of Common Pleas instead of for the City of Cleveland, the plaintiff in the Court of Common Pleas.

7. That the court erred in overruling the motion filed by these plaintiffs in error, defendants in the Court of Common Pleas for a new trial, filed in said Court of Common Pleas.

8. That said judgments of the Court of Common Pleas and the Circuit Court were rendered for the defendant in error, the City of Cleveland when they should have been rendered for the plaintiffs in error.

9. Said Circuit Court erred in affirming the judgment of the Court of Common Pleas, as shown in the record.

10. Said Circuit Court erred in rendering judgment for the defendant in error, the City of Cleveland and against these plaintiffs in error.

11. Said Circuit Court erred in refusing to reverse the judgment of the Court of Common Pleas.

12. The Circuit Court erred in modifying sua sponte the judgment of the Court of Common Pleas, so as to make the judgment award to the defendant in error, the City of Cleveland, plaintiff in the Court of Common Pleas, rights not given to it by the Court of Common Pleas, the City of Cleveland having elected to abide by the judgment of the Court of Common Pleas, and the time within which the city might have reversed such judgment by petition in error having expired.

13. The Circuit Court erred in modifying the judgment of the Court of Common Pleas, its judgment in that respect not having been invoked by the defendant in error, the City of Cleveland, and because the modification so made involved the exercise of jurisdiction by said Circuit Court with regard to a question which had not been determined by the judgment of the Court of Common Pleas.

14. The Circuit Court erred in modifying the judgment of the Court of Common Pleas as shown by the record, because the Circuit

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Court in the circumstances disclosed in this record was without jurisdiction to make the modification, which it assumed to make.

15. The Court of Common Pleas having determined by its judgment that the defendant in error, the City of Cleveland, plaintiff in said Court of Common Pleas was entitled to the property described in the petition, subject to the right of the plaintiffs in error under the contract of September 13, 1849, referred to in said judgment, and said Court of Common Pleas having failed by its said judgment to determine what the rights of the plaintiffs in error were under said contract, it was error for the Circuit Court in the absence of a petition in error by said defendants in error, the City of Cleveland, plaintiff in the Court of Common Pleas, complaining of the judgment so entered to sua sponte modify the judgment of the Court of Common Pleas by inserting therein an interpretation of said contract and defining the rights of the plaintiffs in error thereunder.

16. Other errors appearing upon the record.

Wherefore, said plaintiffs in error pray that said judgment of said Court of Common Pleas and also said judgment of said Circuit Court affirming the same, may be reversed and that said plaintiffs in error be restored to all things that they have lost by reason thereof.

SQUIRE, SANDERS & DEMPSEY,

Attorneys for Plaintiffs in Error.

(Waiver omitted.)

In the Supreme Court of Ohio.

Cross Petition in Error of the Cleveland, Cincinnati, Chicago and St. Louis Railway Company.

Comes now The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, one of the defendants in error in the above entitled action, and for its cross petition in error therein against the defendant in error The City of Cleveland, says that at the September Term, A. D. 1909, of the Circuit Court of Cuyahoga County, Ohio, the defendant in error The City of Cleveland recovered a judgment by the consideration of said court against this defendant in error, the plaintiffs in error and the defendant in error The Lake Shore & Michigan Southern Railway Company in an action then pending therein wherein plaintiffs in error were plaintiffs in error and the defendants in error were defendants in error, which said action was brought by said plaintiffs in error to reverse a certain judgment of the Court of Common Pleas of said county rendered in favor of the defendant in error The City of Cleveland, and against plaintiffs in error, this cross petitioner in error and the defendant in error The Lake Shore & Michigan Southern Railway Company. The transcript of the docket and journal entries filed with the petition in error is hereby adopted and made part of this cross petition in error together with all of the original papers filed with said petition in error.

There is error which affects the substantial rights of this cross petitioner in error in said record and proceedings in this, to-wit:

1. The Court of Common Pleas erred in sustaining the motion filed by the defendant therein, The City of Cleveland, to vacate the judgment and order theretofore rendered in said cause on the 21st day of December, 1899, reading as follows, to-wit: "December 21, 1899. Dismissed for want of prosecution at plaintiff's costs, and judgment rendered."

2. The Court of Common Pleas erred in proceeding with the trial of said action for the reason that it had no jurisdiction of the plaintiffs in error herein or of this cross petitioner in error, and the defendant in error The Lake Shore & Michigan Southern Railway Company, or any jurisdiction of the subject matter of said action.

3. That said Circuit Court erred in affirming the judgment of the Court of Common Pleas as modified by it.

4. Said Circuit Court erred in rendering judgment for defendant in error, The City of Cleveland, and against plaintiffs in error, this cross petitioner in error and the defendant in error The Lake Shore & Michigan Southern Railway Company.

5. Said Circuit Court erred in not reversing the judgment of the Court of Common Pleas.

6. Said judgments of the Court of Common Pleas and of the Circuit Court were rendered for the defendant in error, The City of Cleveland, when they should have been rendered for plaintiffs in error, this cross petitioner in error and defendant in error The Lake Shore & Michigan Southern Railway Company.

7. The Circuit Court erred in modifying sua sponte the judgment of the Court of Common Pleas so as to make the judgment award to the defendant in error The City of Cleveland, plaintiff in error, this cross petitioner in error and defendant in error The Lake Shore & Michigan Southern Railway Company, rights not given to it by the Court of Common Pleas, The City of Cleveland having elected to abide by the judgment of the Court of Common Pleas, and the time within which the city might have reversed such judgment by petition in error having expired.

8. The Circuit Court erred in modifying the judgment of the Court of Common Pleas, its judgment in that respect not having been invoked by the defendant in error, the City of Cleveland, and because the modification so made involved the exercise of jurisdiction by said Circuit Court with regard to a question which had not been determined by the judgment of the Court of Common Pleas.

9. The Circuit Court erred in modifying the judgment of the Court of Common Pleas as shown by the record, because the Circuit Court in the circumstances disclosed in this record was without jurisdiction to make the modification which it assumed to make.

10. The Court of Common Pleas having determined by its judgment that defendant in error, The City of Cleveland, was entitled to the property described in the petition subject to the rights of plaintiffs in error, this cross petitioner in error and The Lake Shore & Michigan Southern Railway Company under contract of December 13, 1849, referred to in said judgment, and said Court of Common

Pleas having failed by its said judgment to determine what the rights of the plaintiffs in error, this cross petitioner in error and defendant in error The Lake Shore & Michigan Southern Railway Company were under said contract, it was error for the Circuit Court, in the absence of a petition in error by said defendant in error The City of Cleveland complaining of the judgment so entered, to sua sponte modify the judgment of the Court of Common Pleas by inserting therein an interpretation of said contract and defining the rights of plaintiffs in error, this cross petitioner in error and defendant in error The Lake Shore & Michigan Southern Railway Company thereunder.

11. For other errors apparent in the record.

Wherefore this cross petitioner in error prays that said judgment of said Court of Common Pleas and said judgment of the Circuit Court affirming and modifying the same may be reversed, and that this cross petitioner in error be restored to all things which it lost by reason thereof.

COOK, MCGOWAN & FOOTE,
*Attorneys for Cleveland, Cincinnati, Chicago
& St. Louis Railway Company.*

(Waiver omitted.)

7 In the Supreme Court of Ohio.

*Cross-Petition in Error of the Lake Shore & Michigan Southern
Railway Company.*

Comes now The Lake Shore & Michigan Southern Railway Company, one of the defendants in error in the above entitled action, and for its cross petition in error therein against the defendant in error The City of Cleveland, says that at the September Term, A. D. 1909, of the Circuit Court of Cuyahoga County, Ohio, the defendant in error The City of Cleveland, recovered a judgment by the consideration of said court against this defendant in error, the plaintiffs in error and the defendant in error The Cleveland, Cincinnati, Chicago & St. Louis Railway Company in an action then pending therein wherein plaintiffs in error were plaintiffs in error and the defendants in error were defendants in error, which said action was brought by said plaintiffs in error to reverse a certain judgment of the Court of Common Pleas of said county rendered in favor of the defendant in error The City of Cleveland, and against plaintiffs in error, this cross petitioner in error and the defendant in error The Cleveland, Cincinnati, Chicago & St. Louis Railway Company. The transcript of the docket and journal entries filed with the petition in error is hereby adopted and made part of this cross-petition in error, together with all of the original papers filed with said petition in error.

There is error which affects the substantial rights of this cross-petitioner in error in said record and proceedings in this, to-wit:

1. The Court of Common Pleas erred in sustaining the motion filed by the defendant therein, The City of Cleveland, to vacate the

judgment and order theretofore rendered in said cause on the 21st day of December, 1899, reading as follows, to-wit: "December 21, 1899, dismissed for want of prosecution at plaintiff's costs, and judgment rendered."

2. The Court of Common Pleas erred in proceeding with the trial of said action for the reason that it had no jurisdiction of the plaintiffs in error herein or of this cross-petitioner in error, and the defendant in error, the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, or any jurisdiction of the subject matter of said action.

3. That said Circuit Court erred in affirming the judgment of the Court of Common Pleas as modified by it.

8 4. Said Circuit Court erred in rendering judgment for defendant in error. The City of Cleveland, and against plaintiffs in error, this cross-petitioner in error and the defendant in error, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

5. Said Circuit Court erred in not reversing the judgment of the Court of Common Pleas.

6. Said judgments of the Court of Common Pleas and of the Circuit Court were rendered for the defendant in error, The City of Cleveland, when they should have been rendered for plaintiffs in error, this cross-petitioner in error and defendant in error, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

7. The Circuit Court erred in modifying sua sponte the judgment of the Court of Common Pleas so as to make the judgment award to the defendant in error, The City of Cleveland, plaintiff in the Court of Common Pleas, rights not given to it by the Court of Common Pleas, The City of Cleveland having elected to abide by the judgment of the Court of Common Pleas, and the time within which the city might have reversed such judgment by petition in error having expired.

8. The Circuit Court erred in modifying the judgment of the Court of Common Pleas, its judgment in that respect not having been invoked by the defendant in error, The City of Cleveland, and because the modification so made involved the exercise of jurisdiction by said Circuit Court with regard to a question which had not been determined by the judgment of the Court of Common Pleas.

9. The Circuit Court erred in modifying the judgment of the Court of Common Pleas as shown by the record, because the Circuit Court in the circumstances disclosed in this record was without jurisdiction to make the modification which it assumed to make.

10. The Court of Common Pleas having determined by its judgment that defendant in error, The City of Cleveland, was entitled to the property described in the petition subject to the rights of plaintiffs in error, this cross-petitioner in error and The Cleveland, Cincinnati, Chicago & St. Louis Railway Company under contract of December 13, 1849, referred to in said judgment, and said Court of Common Pleas having failed by its said judgment to determine what the rights of the plaintiffs in error, this cross-petitioner in error and defendant in error, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, were under said contract, it was error

for the Circuit Court, in the absence of a petition in error by said defendant in error, The City of Cleveland, complaining of the judgment so entered, to sua sponte modify the judgment of the Court of Common Pleas by inserting therein an interpretation of said contract and defining the rights of plaintiffs in error, this cross-petitioner in error and defendant in error, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, thereunder.

11. For other errors apparent in the record.

Wherefore, this cross-petitioner in error prays that said judgment of said Court of Common Pleas and said judgment of the Circuit Court affirming and modifying the same may be reversed, and that this cross-petitioner in error be restored to all things which it lost by reason thereof.

COOK, MCGOWAN & FOOTE,
*Attorneys for Lake Shore & Michigan
Southern Railway Company.*

(Waiver omitted.)

Circuit Court.

Petition in Error.

(Filed July 7, 1909.)

Plaintiffs in error say that, at the April Term A. D. 1909, in the Court of Common Pleas of Cuyahoga county, Ohio, the defendant in error, The City of Cleveland, recovered a judgment by the consideration of said court against the plaintiffs in error, The Cleveland and Pittsburgh Railroad Company and the Pennsylvania Company, in a certain cause wherein the defendant in error, The City of Cleveland, was plaintiff, and The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, The Lake Shore & Michigan Southern Railway Company, The Cleveland and Pittsburgh Railroad Company, and the Pennsylvania Company, were defendants; a transcript of the docket and journal entries whereof, together with a bill of exceptions, allowed therein are filed herewith and made a part hereof.

Plaintiffs in error say that there is error in said record and proceedings, in this, to-wit:

1. That the court erred in sustaining the motion filed by the defendant, City of Cleveland, to vacate the judgment and order heretofore entered in this cause on the 21st day of December, 1899, reading as follows, to-wit: "December 21, 1899. Dismissed for want of prosecution at plaintiff's costs and judgment rendered."

2. That the court erred in proceeding to the trial of said action, for the reason that it had no jurisdiction of these plaintiffs in error or of the defendants in error, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company and The Lake Shore & Michigan Southern Railway Company, or the subject-matter.

3. That the court erred in the admission of evidence offered by the plaintiff in the trial of said cause over the objection of

these plaintiffs in error, defendants below; to which rulings these plaintiffs in error at the time excepted.

4. That the court erred in the exclusion of evidence offered by these plaintiffs in error, defendants below, on the trial of said cause; to which rulings the plaintiffs in error at the time excepted.

5. That the finding and judgment of the court are contrary to the law and the evidence.

6. That the finding and judgment of said court are not sustained by sufficient evidence.

7. That the finding and judgment of said court should have been for these plaintiffs in error, defendants below, instead of for the City of Cleveland, plaintiff below.

8. That the court erred in overruling the motion filed by these plaintiffs in error, defendants below, for a new trial.

9. For other errors apparent upon the face of the record.

Plaintiffs in error therefore pray that said judgment may be reversed, and that they may be restored to all things they have lost by reason thereof.

SQUIRE, SANDERS & DEMPSEY,
Attorneys for Plaintiffs in Error.

(Waiver omitted.)

Circuit Court.

Cross-Petition in Error of the Lake Shore & Michigan Southern Railway Company.

(Filed July 7, 1909.)

The Lake Shore and Michigan Southern Railway Company, defendant in error and cross-petitioner herein, says that at the April Term, A. D. 1909, in the Court of Common Pleas of Cuyahoga county, Ohio, the defendant in error, The City of Cleveland, recovered a judgment by the consideration of said court against the plaintiffs in error, The Cleveland and Pittsburgh Railroad Company and the Pennsylvania Company, and against the defendants in error, The Lake Shore and Michigan Southern Railway Company and the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, in a certain cause wherein the defendant in error, the City of Cleveland, was plaintiff, and The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, The Lake Shore & Michigan Southern Railway Company, The Cleveland and Pittsburgh Railroad Company and the Pennsylvania Company, were defendants; a transcript of the docket and journal entries whereof, together with the bill of exceptions, allowed therein and all original papers filed therein are filed herewith.

Cross-petitioner in error says that there is error in said record and proceedings, in this, to-wit:

1. That the court erred in sustaining the motion filed by the defendant City of Cleveland to vacate the judgment and order heretofore entered in this cause on the 21st day of December, 1899, read-

ing as follows, to-wit: "December 21, 1899. Dismissed for want of prosecution at plaintiff's costs and judgment rendered."

2. That the court erred in proceeding to the trial of said action, for the reason that it had no jurisdiction of plaintiffs in error or of the defendants in error, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company and The Lake Shore and Michigan Southern Railway Company, or the subject-matter.

3. That the court erred in the admission of evidence offered by the plaintiff in the trial of said cause over the objection of cross-petitioner in error, defendant below; to which rulings it at the time excepted.

4. That the court erred in the exclusion of evidence offered by cross-petitioner in error, defendant below, on the trial of said cause; to which rulings it at the time excepted.

5. That the finding and judgment of the court are contrary to the law and the evidence.

6. That the finding and judgment of said court are not sustained by sufficient evidence.

7. That the finding and judgment of said court should have been for cross-petitioner in error and the other defendants below, instead of for the City of Cleveland, plaintiff below.

8. That the court erred in overruling the motion filed by cross-petitioner in error, defendant below, for a new trial.

9. For other errors apparent upon the face of the record.

Cross-petitioner in error therefore prays that said judgment may be reversed, and that it may be restored to all things it has lost by reason thereof.

COOK, MCGOWAN & FOOTE,

*Attorneys for The Lake Shore & Michigan
Southern Railway Company, Defendant
and Cross-Petitioner in Error.*

(Waivers omitted.)

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Circuit Court.

*Cross-Petition in Error of the Cleveland, Cincinnati, Chicago and
St. Louis Railway Company.*

(Filed July 7, 1909.)

The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, defendant in error and cross-petitioner herein, says that at the April Term A. D. 1909, in the Court of Common Pleas of Cuyahoga county, Ohio, the defendant in error, The City of Cleveland, recovered a judgment by the consideration of said court against the plaintiffs in error, The Cleveland and Pittsburgh Railroad Company and the Pennsylvania Company, and against the defendants in error, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company and The Lake Shore and Michigan Southern Railway Company, in a certain cause wherein the defendant in error, The City of Cleveland, was plaintiff, and The Cleveland, Cincinnati,

Chicago & St. Louis Railway Company, The Lake Shore & Michigan Southern Railway Company, The Cleveland and Pittsburgh Railroad Company, and the Pennsylvania Company, were defendants; a transcript of the docket and journal entries whereof, together with the bill of exceptions allowed therein and all original papers filed therein, are filed herewith.

Cross-petitioner in error says that there is error in said record and proceedings in this, *two-wit*:

1. That the court erred in sustaining the motion filed by the defendant City of Cleveland to vacate the judgment and order heretofore entered in this cause on the 21st day of December, 1899, reading as follows, to-wit: "December 21, 1899. Dismissed for want of prosecution at plaintiff's costs and judgment rendered."

2. That the court erred in proceeding to the trial of said action, for the reason that it had no jurisdiction of plaintiffs in error or of the defendants in error, The Lake Shore & Michigan Southern Railway Company, and the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, or the subject-matter.

3. That the court erred in the admission of evidence offered by the plaintiff in the trial of said cause over the objection of cross-petitioner in error, defendant below; to which rulings it at the time excepted.

4. That the court erred in the exclusion of evidence offered by cross-petitioner in error, defendant below, on the trial of said cause; to which rulings it at the time excepted.

13 5. That the finding and judgment of the court are contrary to the law and the evidence.

6. That the finding and judgment of said court are not sustained by sufficient evidence.

7. That the finding and judgment of said court should have been for cross-petitioner in error and the other defendants below, instead of for the City of Cleveland, plaintiff below.

8. That the court erred in overruling the motion filed by cross-petitioner in error, defendant below, for a new trial.

9. For other errors apparent upon the face of the record.

Cross-petitioner in error therefore prays that said judgment may be reversed, and that it may be restored to all things it has lost by reason thereof.

COOKE, MCGOWAN & FOOTE,

*Attorneys for The Cleveland, Cincinnati,
Chicago & St. Louis Railway Com-
pany, Defendant and Cross-Petitioner
in Error.*

(Waivers omitted.)

In the Circuit Court.

Docket and Journal Entries.

Error to Common Pleas, January Term, 1909, Begun and Held
January 4th, 1909.

January Term, 1909.

July 7, 1909. Petition in error, waiver of process, transcript and original papers from Common Pleas filed.

July 7, 1909. Cross petition in error of The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, with waiver, filed.

July 7, 1909. Cross petition in error of The Lake Shore and Michigan Southern Railway Company, with waiver, filed.

January 17, 1910. To the Court: This cause came on to be heard upon the pleadings and the transcript of the record in the Court of Common Pleas, and was argued by counsel, and submitted to the court; and on consideration of all the assigned errors, the court finds that there is no error apparent on the record to the prejudice of the plaintiffs in error. The court further finds, however, that said judgment of the Court of Common Pleas should be, and the same is hereby modified to read as follows: This cause coming on for hearing this day, and all parties hereto having waived a jury and submitted this cause to the court, the same was heard upon the pleadings and the evidence; and upon consideration thereof, the court finds that the plaintiff has a legal estate in and is entitled to

the immediate possession of the premises described in the
14 petition, subject to all such contract rights as defendants, or any of them, may have under and by virtue of a contract dated September 13, 1849, by and between The City of Cleveland and The Cleveland, Columbus and Cincinnati Railroad Company, which said contract is recorded in volume 51, pages 187, 188, 189, and 190 of the records of Cuyahoga county, Ohio, and being the same contract referred to in the pleadings of the parties herein, including such rights under and by virtue of said contract as any of said defendants have acquired by succession from or agreement with the Cleveland, Columbus and Cincinnati Railroad Company, its successors or assigns, to lay, maintain and use tracks over and across the portions of said premises hereinafter designated as first, second and third parcels, without thereby or in any manner excluding free use of the whole and every part of said premises by the public for street purposes and full control and supervision of the same by the proper municipal officers of said city. And the court further finds that the defendants have unlawfully kept the plaintiff out of the possession of said premises, excepting the following described portions thereof, to-wit: First Parcel. A piece or parcel bounded southerly by a line drawn parallel with the southerly line of Bath (now Front) street, and one hundred and thirty-two (132) feet northerly or northwesterly at right angles from said southerly

line of Bath (now Front) street; easterly by a line drawn parallel with the westerly face of the stone (United States Government) pier, so-called, upon the easterly side of the Cuyahoga river, and one hundred (100) feet easterly therefrom; northerly by a line drawn parallel with the southerly line of Bath (now Front) street and two hundred and eighty-two (282) feet northerly therefrom; and westerly by the west face of said stone (United States Government) pier, on the easterly side of the Cuyahoga river. Second Parcel. A strip of land twenty-five (25) feet in width bounded westerly by the west face of said stone (United States Government) pier, *on the* easterly by a line drawn parallel therewith and twenty-five (25) feet therefrom, and extending from the northerly line of the above described parcel of land designated as first parcel, along said pier to the northerly end thereof as it is now or may be hereafter extended. Third Parcel. All that part of said property described in the petition which lies southerly of a line drawn parallel with the southerly line of Front street, formerly Bath street, in the City of Cleveland, and one hundred and thirty-two (132) feet northerly or northwesterly at right angles from said southerly line of Front street. The motions for a new trial heretofore filed herein

by the defendants and refiled by said defendants as of the
15 date of this decree, are each of them hereby overruled. To which overruling of said motions the defendants herein severally and separately except. It is therefore ordered, adjudged and decreed that plaintiff do recover from defendants possession of the premises described in the petition, excepting therefrom the parcels designated as first parcel, second parcel and third parcel hereinbefore described, but provided that such possession shall be subject to such rights as the defendants and any of them may have, as aforesaid, in said premises under and by virtue of said contract of September 13th, 1849. It is further ordered that plaintiff recover of the defendants its costs herein to be taxed, for which judgment is rendered against the defendants. Judgment is also rendered against the defendants for their costs herein to be taxed. And it is further ordered, adjudged and decreed that a writ of possession issue against the defendants and in favor of the plaintiff for the possession of said premises described in the petition, excepting the portions thereof hereinbefore described as first parcel, second parcel and third parcel, subject to the rights of the defendants therein as above set forth. To each and all of the foregoing findings, orders and judgments each of the defendants severally and separately except. And as modified herein said judgment is affirmed. It appearing to the court that there were reasonable grounds for this proceeding in error, it is ordered that no penalty be assessed herein. It is further ordered that the defendant in error, the City of Cleveland, recover from the plaintiffs in error and the defendant cross-petitioners in error its costs herein. Ordered that a special mandate be sent to the Court of Common Pleas, to carry this judgment into execution. To all of which findings, rulings and judgment the plaintiffs in error and the defendant cross-petitioners in error severally except. Jour. 12-227.

(Duly certified.)

Court of Common Pleas.

THE CITY OF CLEVELAND, Plaintiff,

vs.

THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY Company, The Lake Shore and Michigan Southern Railway Company, The Cleveland and Pittsburgh Railroad Company, and The Pennsylvania Company, Defendants.

Petition.

(Filed August 17, 1893.)

16 The plaintiff is a municipal corporation duly organized under the laws of the State of Ohio, being a city of the second grade of the first-class, and is the successor of the Village of Cleveland, which was incorporated by an act of the General Assembly of the State of Ohio, entitled "an act to incorporate the Village of Cleveland in the County of Cuyahoga," passed December 23, 1814 (13 O. L., 17).

The defendant, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, is a corporation duly organized under the laws of the State of Ohio.

The defendant, The Lake Shore and Michigan Southern Railway Company, is a corporation duly organized under the laws of the State of Ohio.

The defendant, The Cleveland and Pittsburgh Railroad Company, is a corporation incorporated by an act of the General Assembly of the State of Ohio, passed March 14, 1836, (34, O. L., 576.)

The defendant, The Pennsylvania Company, is a corporation organized under the laws of the State of Pennsylvania, and is operating a railroad from the City of Cleveland to the Ohio river, within the State of Ohio.

The plaintiff says that it has a legal estate in and is entitled to the possession of the following described real estate, all of which is a part of a public street in said City of Cleveland, known as Bath street and also sometimes called Front street, to-wit, situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and being a part of Bath street as shown on the plat and minutes of the survey of the Village of Cleveland, made by Amos Spafford, November 6, 1801, and recorded in volume A, page 482, of Cuyahoga County records, and bounded as follows: Northerly by the waters of Lake Erie, easterly by the westerly line of Water street and said line produced northerly to Lake Erie, southerly by a line parallel with the northerly line of original lot number 191 in said city and one hundred feet northerly therefrom, and westerly by the east bank of the Cuyahoga river, as it now runs, and the east government pier, and that the defendants unlawfully keep said plaintiff out of the possession thereof, whereby said plaintiff is

unable to perform the duty imposed upon it by law, to keep the same open and in repair and free from nuisances.

Wherefore plaintiff asks judgment for the possession of said premises.

JAMES LAWRENCE,
ESTEP, WEH & HENRY,
Plaintiff's Attorneys.

(Verification and præcipe omitted.)

Answer of Pennsylvania Company.

(Filed Oct. 14, 1893.)

The defendant, Pennsylvania Company, for its separate answer to the petition of plaintiff filed herein, says it admits that the plaintiff is a municipal corporation, and is the successor of the Village of Cleveland. It admits that its co-defendants are corporations as in the petition alleged, and further answering it denies each, all and singular of the other allegations in the petition contained, not hereinbefore expressly admitted.

2nd. For a further and second defense to the alleged cause of action in the petition set forth, the defendant says that this defendant and those under whom it holds, have been in the continuous, open, notorious, uninterrupted and adverse possession of the premises described in plaintiff's petition, under claim of right and ownership, for more than twenty-one years last past before the commencement of this action.

3rd. For a third defense in this behalf, the defendant says that the alleged cause of action in the said petition set forth did not accrue to the said plaintiff within twenty-one years next before the commencement of this action, and is therefore barred by the statute of limitations.

Wherefore, this defendant prays to be hence dismissed with its costs.

By SQUIRE, SANDERS & DEMPSEY,
Its Attorneys.

(Duly verified.)

Court of Common Pleas.

Amendment to Answer of the Pennsylvania Company.

(Filed Dec. 31, 1897.)

The defendant, the Pennsylvania Company, now comes, and, by leave of court first had and obtained, by way of amendment to its answer filed herein, and as a fourth defense to the alleged cause of action in the petition set forth, says:

That the plaintiff ought not to have and maintain its said action against this defendant, because this defendant says that it is in possession of and holds title to the premises in the petition described as lessee of the defendant the Cleveland & Pittsburgh Railroad Company, and that it is so in possession by virtue of the title of the Cleveland & Pittsburgh Railroad Company transferred to it under said lease, which title said Cleveland & Pittsburgh

18 Railroad Company acquired, not only by adverse possession for more than twenty-one years under color of title, but also by deeds of conveyance running directly from the Connecticut Land Company, the original owners thereof, and through Thomas Lloyd and his heirs and assigns, to the said Cleveland & Pittsburgh Railroad Company; and that prior to March, 1848, the plaintiff herein, the City of Cleveland, entirely abandoned, for street purposes, all that portion of the premises in the petition herein described which lies northerly of a line drawn parallel with the southerly line of Bath street, so-called, and 132 feet more or less northerly at right angles therefrom, and having so abandoned all of said premises and any right which it claimed to have therein for the purpose of a public highway; it was at that time exercising some alleged rights of ownership which it then claimed to have in said premises, of the nature of which this defendant is not informed, and had placed sundry persons in possession of portions thereof under contracts of lease, and said premises, with the permission of the said city, were then being used by such persons, to whom it had so leased the same, for purposes entirely inconsistent with the use of the premises as a street or public highway, and thereupon, at some date shortly prior to March, 1848, the heirs of Thomas Lloyd, one of the grantors of this defendant, who then owned the fee simple title to said premises, instituted in the Court of Common Pleas of this county nine actions in ejectment in which said actions the heirs of Thomas Lloyd claimed that the city, through its tenants, was unlawfully occupying a large portion of the premises in the petition herein described, and asking judgment against the City of Cleveland ousting it from the title and possession thereof; that the City of Cleveland, being so made defendant in said actions, appeared and answered claiming title to said premises—part and parcel of the premises sought to be recovered in this action—and claiming such title by virtue of the same alleged right which, as this defendant is informed and alleges the fact to be, it now seeks to recover in this action, and thereafter such proceedings were had in such several actions so brought in said Court of Common Pleas, and so involving the title and right of the City of Cleveland in and to said premises, that at the March term, 1848, of said court it was adjudged and decreed that, as against the said City of Cleveland, the said heirs of Thomas Lloyd were entitled to hold and possess said premises, and said city and its lessees were, by the judgment of said court, ousted therefrom, which judgment still remains in full force and effect. And defendant says that the premises from which the said City of Cleveland was so ousted

19 by the judgment of this court in favor of the said grantors of the said Cleveland & Pittsburgh Railroad Company in 1848 are part and parcel of the same premises which the city now seeks to recover in this action.

Defendant further says, that shortly after the termination of said actions in the Court of Common Pleas, the Cleveland & Pittsburgh Railroad Company was constructing from the southeast its line of railroad to the City of Cleveland; the Cleveland, Painesville & Ashtabula Railroad Company its railroad from the east, and the Cleveland, Columbus & Cincinnati Railroad Company its line of road from the south, seeking an entrance in to the City of Cleveland, and required terminal and other facilities at and near the mouth of the Cuyahoga river, and the property sought to be recovered in this action being at the time deemed essential to the said railroad companies in the proper location and construction of said lines of railway, the said Cleveland & Pittsburgh Railroad Company began proceedings for the appropriation of said land by proper action in the Superior Court, which appropriation it had, by its charter, full authority to make, and at this same time the said City of Cleveland, notwithstanding the judgments in ejectment in said cases hereinbefore set forth, was still making some claim of rights in said premises, and the grantors of said Cleveland & Pittsburgh Railroad Co. were likewise claiming rights therein, and as well sundry persons who were in possession thereof under leases from the city, and thereupon the City of Cleveland, through its duly authorized representatives, entered into negotiations with the parties in interest, and particularly the Cleveland, Columbus & Cincinnati Railroad Company, to the end that the question of its occupation of the premises sought to be recovered herein, and the right of that railroad company and others thereto, might be determined; and thereupon, as a means of settling all controversy with respect to the rights of the city and the said railroad company in the said premises, an agreement and instrument in writing was duly entered into between the said parties, dated September 13th, 1849, and by virtue thereof, for a consideration of fifteen thousand dollars then and there paid to said City of Cleveland, it duly conveyed and transferred to the Cleveland, Columbus & Cincinnati Railroad Company all such right, title or interest which it had or claimed to have in the premises sought to be recovered in this action, and in and by said instrument of conveyance the city expressly conveyed such claim as it had to said premises subject to the rights of the defendant the Cleveland & Pittsburgh Railroad Company and its grantors therein.

20 Defendant further says that after the trial and determinations of said proceedings in ejectment, and after the conveyance by said City of Cleveland of such rights as it had in said premises to the Cleveland, Columbus & Cincinnati Railroad Company, there was begun in this court a certain action wherein Price & Crawford, a partnership, were plaintiffs, and the City of Cleveland, Hezekiah Camp, William B. Lloyd and the Cleveland, Columbus & Cincinnati Railroad Company were defendants, which

said action was begun at the March term of this court 1850, and in and by the bill of complaint in said action complainants alleged that they were in the possession of a certain portion of the premises sought to be recovered in this action, holding as lessees under the City of Cleveland, and charging that the City of Cleveland and the other defendants had entered into an unlawful combination, the effect of which was to deprive complainants of their rights as lessees, and asking an injunction to protect them in the premises; that in said action the City of Cleveland, by its duly authorized representative, on the 29th day of January, 1851, filed an answer to the said bill of complaint, and in and by said answer it, among other facts, admitted and alleged that, by the terms of an agreement between the City of Cleveland and the Cleveland, Columbus & Cincinnati Railroad Company made on the 13th day of September, 1849, the said company had acquired whatever interest the said City of Cleveland had in and to the premises in this action described, subject to the rights and privileges of all other persons which could be legally enforced against the property had the city continued to own the same, and expressly averring that the railroad company had succeeded to the rights of the city, and that the defendants Camp and Lloyd, grantors of this defendant, and through whom this answering defendant traces its title to said property; had compromised all matters in controversy, and alleging that said compromise was a fair and reasonable one, such as the company was fairly justified in making, and that there was nothing in the then situation which required the city to persist in making a series of doubtful and expensive law suits when a reasonable compromise could be made, and in and by said answer the said City of Cleveland disclaimed any interest whatever in the property sought to be recovered in this action.

Defendant further says that the Cleveland & Pittsburgh Railroad Company having, about the year 1851, acquired by purchase from the record owners thereof the land in the petition described, and being in undisturbed possession thereof, and after the proceedings aforesaid had been had, and of which said company had due notice at the time, and acting upon the faith of such proceedings and

21 upon the faith of the title which it so acquired and the acquiescence and solemn declarations of the City of Cleveland with respect thereto, began large and extensive improvements upon said property, and was induced thereto and made the same relying upon the acts and declarations and acquiescence of the City of Cleveland hereinbefore set forth, and did expend large sums of money both in the acquirement of outstanding claims of title of other persons and in laying tracks, building depots and other buildings, and developing and improving the same as the increasing demands of the public required, and that the expenditures which it so made upon said property upon the faith of its said title and the acts and acquiescence of the said City of Cleveland, up to the year 1871, amount in the aggregate to at least the sum of \$582,000.00; that a large portion of such improvements consisted of large and permanent structures, and expenditures of large sums

of money upon said premises were made by said company openly and with the knowledge and tacit acquiescence of the City of Cleveland for a long series of years, during which said period the City of Cleveland up to about the time of the commencement of this action never asserted or claimed to have, or in any way notified the said Cleveland & Pittsburgh Railroad Company that it claimed to have, any right, title or interest of any kind in and to said premises.

Defendant further says, that about the year 1871, being thereunto lawfully authorized, it entered into a contract of lease with the Cleveland & Pittsburgh Railroad Company, by virtue of which the property in the petition described, and other property of said Cleveland & Pittsburgh Railroad Company, was turned over to the possession of this defendant as lessee; that under and by virtue of the terms of said lease, this, defendant company was authorized and required to make necessary improvements upon said line of railroad, it having been agreed that, for that purpose, the bonds of the Cleveland & Pittsburgh Railroad Company should from time to time be issued for the purpose of raising the necessary money therefor, so that this defendant, in about the year 1871, became possessed of the property in the petition described, and in so making said lease it relied upon the title of the Cleveland & Pittsburgh Railroad Company, as hereinbefore set forth, and upon the action, declarations, acquiescence, and silence of the City of Cleveland with respect thereto, and of which it was fully advised, and in such reliance and being induced thereto by reason of the facts hereinbefore stated, this defendant proceeded to the expenditure of a large amount of money in the improvement of the premises in the petition described, and as lessee of the said Cleveland & Pittsburgh Railroad Company, it has, since it acquired possession of said premises as

22 such lessee, expended in permanent improvements thereon, in the aggregate, at least the sum of \$231,000.00; and defendant says that it would not have entered into said contract of lease or made such expenditures but for its reliance upon the facts hereinbefore stated, and defendant says that, by reason of the facts in this defense stated, the City of Cleveland more than forty years ago parted with whatever title it had or claimed to have to the premises in the petition described, and, by its acts, acquiescence and silence for so long a period, during which the said Cleveland & Pittsburgh Railroad Company and this defendant, relying thereon, had so improved said property as hereinbefore stated, it is now estopped from asserting, as against this defendant, any claim to said premises or any portion thereof.

SQUIRE, SAUNDERS & DEMPSEY,

Attorneys for Pennsylvania Company.

(Duly verified.)

Court of Common Pleas.

Answer of the Cleveland & Pittsburgh Railroad Company.

(Filed Oct. 14, 1893.)

The defendant, The Cleveland & Pittsburgh Railroad Company, for its separate answer to the petition of plaintiff filed herein, says it admits that the plaintiff is a municipal corporation, and is the successor of the Village of Cleveland. It admits that its co-defendants are corporations as in the petition alleged, and further answering it denies each, all and singular of the other allegations in the petition contained, not hereinbefore expressly admitted.

2nd. For a further and second defense to the alleged cause of action in the petition set forth, the defendant says that this defendant and those under whom it holds have been in the continuous, open, notorious, uninterrupted and adverse possession of the premises described in plaintiff's petition, under claim of right and ownership, for more than twenty-one years last past before the commencement of this action.

3rd. For a third defense in this behalf, the defendant says that the alleged cause of action in the said petition set forth did not accrue to the said plaintiff within twenty-one years next before the commencement of this action, and is therefore barred by the statute of limitations.

Wherefore, this defendant prays to be hence dismissed with its costs.

By SQUIRE, SANDERS & DEMPSEY,
Its Attorneys.

(Duly verified.)

23

In the Court of Common Pleas.

Amendment to Answer of the Cleveland & Pittsburgh Railroad Co.

(Filed Dec. 31, 1897.)

The defendant, the Cleveland & Pittsburgh Railroad Company, now comes, and, by leave of court first had and obtained, by way of amendment to its answer filed herein, and as a fourth defense to the alleged cause of action in the petition set forth, says:

That the plaintiff ought not to have and maintain its said action against this defendant, because, the defendant says, it is in possession of and holds title to the premises in the petition described, not only by the title which it has acquired by adverse possession for more than twenty-one years under color of title, but also by deeds of conveyance running directly from the Connecticut Land Company, the original owners thereof, and through Thomas Lloyd and his heirs and assigns, to this defendant; and that, prior to March, 1848, the plaintiff herein, the City of Cleveland, entirely abandoned,

for street purposes, all that portion of the premises in the petition herein described which lies northerly of a line drawn parallel with the southerly line of Bath street so-called, and 132 feet more or less northerly at right angles therefrom; and having so abandoned all of said premises, or any right which it claimed to have therein for the purposes of a public highway, it was at that time exercising some alleged right of ownership, which it then claimed to have in a portion of said premises, of the nature of which this defendant is not informed, and had placed sundry persons in possession of portions thereof under contract of lease, and said premises, with the permission of said city, were then being used by such persons to whom it had so leased the same for purposes entirely inconsistent with the use of the premises as a street or public highway, and thereupon, at some date shortly prior to March, 1848, the heirs of Thomas Lloyd, one of this defendant's grantors, who then owned the fee simple title to said premises, instituted in the Court of Common Pleas of this county nine actions in ejectment, in which said actions the heirs of Thomas Lloyd claimed that the city, through its tenants, was unlawfully occupying a large portion of the premises in the petition herein described, and asking judgment against the City of Cleveland ousting it from the title and possession thereof; that the City of Cleveland, being so made defendant in said actions,

24 appeared and answered claiming title to said premises, which were part and parcel of the premises sought to be recovered in this action, and claiming such title by virtue of the same alleged right which, as this defendant is informed and alleges the fact to be, it now seeks to recover in this action, and thereafter such proceedings were had in such several actions so brought in said Court of Common Pleas and so involving the title and right of the City of Cleveland in and to said premises, that, at the March term, 1848, of said court it was adjudged and decreed that, as against the said City of Cleveland, the said heirs of Thomas Lloyd were entitled to hold and possess said premises, and the said city and its lessees were, by the judgment of said court, ousted therefrom, which judgment is still in full force and effect. And defendant says that the premises from which the said City of Cleveland was so ousted by the judgment of this court in favor of the said grantors of this defendant in 1848 are part and parcel of the same premises which the city now seeks to recover in this action.

Defendant further says that, shortly after the termination of said actions in the Court of Common Pleas, the Cleveland & Pittsburgh Railroad Company was constructing, from the southeast, its line of railroad to the City of Cleveland, the Cleveland, Painesville & Ashtabula Railroad Company its railroad from the east, and the Cleveland, Columbus & Cincinnati Railroad Company its line of road from the south, seeking an entrance into the City of Cleveland, and required terminal and other facilities at and near the mouth of the Cuyahoga River, and the property sought to be recovered in this action being at the time deemed essential to this defendant and the other said railroad companies in the proper location and construction of its said railway, this defendant began proceedings for

the appropriation of said land by proper action in the Superior Court, which appropriation it had by its charter, full authority to make, and at this same time the City of Cleveland, notwithstanding the judgments in ejectment in said cases hereinbefore set forth, was still making some claim of rights in said premises, and the grantors of this defendant were likewise claiming rights therein, and as well sundry persons who were in possession thereof under leases from the said city; and thereupon the City of Cleveland, through its duly authorized representatives, entered into negotiations with parties in interest, and particularly the Cleveland, Columbus & Cincinnati Railroad Company, to the end that the question of its occupation of the premises sought to be recovered herein, and the right of that railroad company and others thereto, might be determined; and thereupon, and as a means of settling all
25 controversy with respect to the rights of the city and the said railroad company in said premises, an agreement and instrument in writing was duly entered into between the said parties, dated September 13th, 1849, and by virtue thereof, for a consideration of fifteen thousand dollars then and there paid to said City of Cleveland, it duly conveyed and transferred to the Cleveland, Columbus & Cincinnati Railroad Company all such right, title or interest as it had or claimed to have in the premises sought to be recovered in this action, and in and by said instrument of conveyance the city expressly conveyed such claim as it had in said premises subject to the rights which this defendant company and its grantors had therein.

Defendant further says that, after the trial and determination of said proceedings in ejectment, and after the conveyance by said City of Cleveland of such rights as it had in said premises to the Cleveland, Columbus & Cincinnati Railroad Company, there was begun in this court a certain action wherein Price & Crawford, a partnership, were plaintiffs, and the City of Cleveland, Hezekiah Camp, William B. Lloyd and the Cleveland, Columbus & Cincinnati Railroad Company were defendants, which said action was begun at the March term of this court, 1850, and in and by the bill of complaint in said action the complainants alleged that they were in the possession of a certain portion of the premises sought to be recovered in this action, holding as lessees under the City of Cleveland, and charging that the City of Cleveland and the other defendants had entered into an unlawful combination, the effect of which was to deprive complainants of their rights as lessees, and asking an injunction to protect them in the premises; that in said action the City of Cleveland, by its duly authorized representative, on the 29th day of January, 1851, filed an answer to said bill of complaint, and in and by said answer it, among other facts, admitted and alleged that, by the terms of an agreement between the City of Cleveland and the Cleveland, Columbus & Cincinnati Railroad Company, made on the 13th day of September, 1849, the said company had acquired whatever interest the said City of Cleveland had in the premises in this action described, and subject to the rights and privileges of all other persons which could have been legally enforced against the property had the city continued to hold the same,

and expressly averring that the railroad company had succeeded to the rights of the city, and that the defendants Camp and Lloyd, grantors of this defendant and to whom this answering defendant traces its title to said property, had compromised all matters in controversy, and alleging that said compromise was a fair and reasonable one, such as the company was fairly justified in making, and that there was nothing in the then situation which required

26 the city to persist in making a series of doubtful and expensive lawsuits when a reasonable compromise could be made; and in and by said answer the city disclaimed any interest whatever in the property sought to be recovered in this action.

Defendant further says that, having, about the year 1851, acquired by purchase from the record owners thereof, the land in the petition described, and being in the undisturbed possession thereof, and after the proceedings aforesaid had been had, and of which this company had due notice at the time, and acting upon the faith of such proceedings and upon the faith of the title which it had so acquired, and the acquiescence and solemn declarations of the City of Cleveland with respect thereto, this company began large and extensive improvements upon said property, and, relying upon the acts and declarations and acquiescence of the City of Cleveland, and upon its lawfully acquired title to said premises, it was induced to and did expend large sums of money, both in the acquirement of the outstanding claims of title of other persons and in laying tracks, building depots and other buildings, and continually developing and improving the same as the constantly increasing demands of the public required; that the expenditures which it has so made, directly and through its lessee the Pennsylvania Company, upon said property upon the faith of its said title and the action of the said City of Cleveland, amount in the aggregate, exclusive of the amount paid for the land, to at least the sum of \$800,000.00; that a large portion of said improvements consists of large and permanent structures and buildings, and that each and all of said improvements and expenditures of money on said premises have been made openly and with the knowledge and tacit acquiescence of the City of Cleveland for more than forty years last past, and during that entire period the said City of Cleveland, up to about the time of the commencement of this action, has never asserted or claimed to have, nor in any way notified this defendant that it claimed to have, any right, title or interest of any kind in said premises.

Defendant says that, by reason of the facts hereinbefore stated, the City of Cleveland more than forty years ago parted with whatever title it had or claimed to have in the premises in the petition described, and by its acts and its acquiescence and silence for so long a period, during which this defendant, relying thereon, has so improved said property, it is now estopped from asserting, as against this defendant, any claim to said premises or any portion thereof.

SQUIRE, SANDERS & DEMPSEY,
*Attorneys for the Cleveland & Pittsburgh
Railroad Company.*

(Duly verified.)

Separate Second Amended Answer of Defendant, The Lake Shore & Michigan Southern Railway Co.

(Filed Nov. 6, 1897.)

And now comes The Lake Shore & Michigan Southern Railway Company, defendant, and for its separate second amended answer to the petition of plaintiff says that it admits that the plaintiff is a municipal corporation, and is the successor of the Village of Cleveland. It admits that the defendant, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, is a corporation duly organized under the laws of the State of Ohio; that the defendant, The Lake Shore & Michigan Southern Railway Company, is a corporation duly organized under the laws of the State of Ohio; that the defendant, The Cleveland & Pittsburgh Railroad Company, is a corporation organized under the laws of the State of Ohio; and that The Pennsylvania Company is a corporation organized under the laws of the State of Pennsylvania, and is operating a railroad from the City of Cleveland to the Ohio River, within the State of Ohio.

This defendant admits that said defendants are in possession of the land described in plaintiff's petition.

And this defendant denies each, all and singular of the other allegations in said petition contained not herein expressly admitted.

Second. This defendant for a further and second defense, to the matters and things set forth in the plaintiff's petition herein, says that on or about the 13th day of September, A. D. 1849, the said plaintiff, by F. W. Bingham, then mayor of said city, and duly authorized by resolution of the City Council of said city, duly executed, acknowledged and delivered, for the consideration therein mentioned, a deed and lease, of which the following is a true copy, to-wit:

"This Indenture, made this 13th day of September in the year of Our Lord, One Thousand Eight Hundred and Forty-nine, by and between The City of Cleveland, by F. W. Bingham, Mayor of said City, thereunto duly authorized by Resolution of the City Council of said City—party of the first part, and the Cleveland, Columbus, and Cincinnati Railroad Company, by John M. Woolsey, Vice President thereof, thereunto duly authorized by resolution of the Board of Directors of said Company, party of the second part, witnesseth:

28 "That said City of Cleveland, in consideration of the sum of Fifteen Thousand Dollars received by said City of said Railroad Co., in the Capital stock of said Company, for which a certificate for one hundred and fifty shares of one hundred dollars each—full paid of said stock hath been issued to said City—the receipt whereof is hereby acknowledged, and also in consideration of the covenants of said Rail Road Company hereinafter con-

tained, hath granted, and by these presents doth grant to said Rail Road Company as fully and absolutely as said City or the constituted authorities thereof have the power or legal authority so to do—the right to the full and perpetual use and occupancy, for their Rail Road tracks, turn outs—engines—cars and passenger houses—turn tables—water tanks or stations, avenues to and from the same, leaving open spaces between when deemed expedient—and other purposes connected with and necessary for the convenient use and working of said Railroad. All of Bath Street in said City of Cleveland, situate northwesterly of a line drawn parallel with the southerly line of Bath Street and one hundred and thirty two feet northwesterly at right angles therefrom. Excepting and reserving therefrom, a piece or parcel bounded southerly by the last described line—eastwardly by a line drawn parallel with the westerly face of the stone pier so called and one hundred (100) feet eastwardly therefrom and northwardly by a line drawn parallel with the south line of Bath Street and two hundred and eighty two (282) feet northwardly therefrom—which is reserved for public use as part of Bath Street and also reserving and excepting therefrom, a strip of twenty-five feet in width bounded westerly by the west face of said pier, and easterly by a line parallel therewith and twenty five feet therefrom and extending from the northerly line of said last described parcel of land along said pier to the Northwardly end thereof as it now is or may be hereafter extended, which is to be kept open as a public highway and shall not be obstructed by said city, or by any person or persons or company claiming through said city or by their permission.

“To have and to hold the same to the said Railroad Company, its successors & assigns, upon the terms and subject to the stipulations and conditions following—That is to say, Said Company shall take and hold the same subject to all legal claims, either in law or equity of any person or persons, company, or companies.

“It being expressly understood that the City does not guarantee nor warrant either the title or the right to occupy the same. The said Rail Road Company to have all the money compensation, interest, benefits & rights which the City could in any manner be entitled on account thereof. Said Company shall save said City

harmless from all damages to persons holding any part or
29 parts of the premises under leases from the City, consequent upon the taking possession of the ground so leased, or in any way depriving them of the full enjoyment of their leasehold interests before the expiration thereof, it being understood that this indemnification is to extend to such damages only as the City shall be legally holden to make good to the claimants thereof. All leases made by the City of parts of said premises shall be assigned to said Company, said company to have the right to collect and receive the rents hereafter accruing, and shall pay over to said City, two thirds of all rents collected on land fronting on the River and lying between the South line of Bath Street and a line parallel therewith and 282 feet Northwardly therefrom until said Company shall deliver to said City the possession of said strip of 100 feet in width next the pier hereinbefore reserved.

"And the said Company shall not renew or extend said Leases nor grant any new Lease of any part of the premises which will interfere with the opening of Bath Street to the width of 132 feet, or of the extension thereof on or near the stone pier as hereinbefore described. The said Company shall not lease any part of the premises to any person or persons—company or companies to be used for conducting or carrying on forwarding, storage or commission business—or for the erection of warehouses thereon for the accommodation of such business, nor shall any company use said premises or any part thereof for the purpose of engaging in accommodating or aiding in the transaction of forwarding, commission or warehousing business, with a view either directly or indirectly of deriving profit therefrom, nor shall they grant the right to any Railroad company, person or persons or other company or companies so to do.

"But this prohibition shall not be construed to prevent said Rail Road Company from erecting on said premises a suitable ware house or ware houses, for the reception and safe keeping of such articles of property as may be entrusted to their care for transportation and not consigned to any person or persons or company in Cleveland having the means of storing the same. It being the object and intent of the parties to this agreement to provide that said premises shall not be so used as to interfere or come in competition with individuals, companies or firms in forwarding, commission, storage or warehouse business in Cleveland, by carrying on or engaging in by said company accommodating or aiding in forwarding, commission or storage, warehousing or other business not necessary to secure the transportation of property over their road, but may be used

30 by said company for all purposes necessary for the convenient or profitable working of their road, subject to the restrictions aforesaid, said company to take and hold said land subject to all the legal rights and claims of the Cleveland and Pittsburgh Railroad Company upon the same, and to have all the benefits to accrue from such claimants as is before provided. And as a further provision for the same, shall upon reasonable and equitable terms extend to said Cleveland and Pittsburgh Rail Road Company, and The Cleveland and Painesville and Ashtabula Rail Road Company, room for warehouse and passenger depots and such facilities for coming onto said premises with their cars, engines and tenders, for the reception and delivery of passengers, baggage, & freight subject to the same restrictions as to warehousing, forwarding & commission business as one herein imposed upon the Cleveland, Columbus & Cincinnati Rail Road Company, and for transferring them to or receiving them from other railroads or from steam boats, either by independent tracks or by the use of the track laid by the Cleveland, Columbus & Cincinnati Rail Road Company as shall be found most convenient to all concerned, and in case the parties cannot agree either as to the terms or manner of occupying such parts of the premises as may be so required—the same shall be determined by three competent, disinterested men, one to be chosen by each party, & the third by the two so chosen. It being however understood, that the Cleveland, Columbus and Cincinnati Rail Road Company, shall not be bound to permit either of said

Rail Road Companies to use for car, engine or ware-houses or grounds on which to place or dispose of cars, engines, tenders or other furniture of their roads, any part of said premises which said arbitrators shall decide as necessary for these purposes, to be used exclusively by said Cleveland, Columbus & Cincinnati Rail Road Company.

"It being further understood and agreed, that no part of said premises shall, after two years from this date be used by said Cleveland, Columbus & Cincinnati Rail Road Company for forge purposes, work shops or anything of a similar nature, for the manufacture of cars, engines or other machinery, so as to deprive either of said other Railroad Companies of the full benefit of the use of part of said premises intended by this agreement to be extended to them.

"Said Cleveland, Columbus and Cincinnati Rail Road Company shall manage and take care of all suits or actions now pending or which may be hereafter commenced for obtaining possession of said premises or any part thereof, and may compromise or settle such suits and said Company shall save the City harmless from all cost and charges on account thereof, except such as have already accrued against said City, and in case of settlement, shall

31 save the City harmless from all legal costs in the case in court on Bank—except the costs made by the City. And shall further save the City harmless from all legal claims or demands, which are now or may hereafter be set up against the City, growing out of the use or occupation of said premises by said City or its tenants or lessees.

"And to enable said Company to compromise and settle with the claimants, Lloyd & Camp & all other claimants for the extinguishment of their claims to said premises or any part thereof, they may allow them to retain such portion thereof as may be necessary to effect such settlement and as shall not be deemed necessary to be used for Rail Road purposes, and the said Cleveland, Columbus & Cincinnati Rail Road Company doth hereby covenant and agree to and with said City, that said Company will hold said premises upon the terms and subject to the stipulations and conditions herein recited, and will do and perform all and singular, the acts required, and abstain from doing and performing all & singular the acts prohibited by the terms and stipulations herein recited—

"In witness whereof the City Council of said City of Cleveland have caused to be herewith affixed the seal of said City and these presents to be subscribed by the Mayor thereof.

"And the Cleveland, Columbus and Cincinnati Rail Road Company have caused to be hereto affixed, their corporate seal, and these presents to be subscribed by their Vice President, the day and year first above written.

THE CITY OF CLEVELAND,

[CORPORATE SEAL.]

By FLAVEL W. BINGHAM, *Mayor*.

THE CLEVELAND, COLUMBUS AND CINCINNATI RAIL ROAD COMPANY,

[SEAL.] By JNO. M. WOOLSEY, *Vice-President*."

"Signed, sealed and delivered The words Alfred Kelley on the 6th line of first page, being first erased and the words John M. Woolsey Vice- interlined above such erasure—Also the word Vice- being first interlined above the second line from the bottom of the last page. In presence of:

J. D. CLEVELAND.

D. W. CROSS.

"THE STATE OF OHIO,
Cuyahoga County, ss:

"Before me, James D. Cleveland, Justice of the Peace in and for said County, personally appeared, the within named John M. Woolsey as Vice President of the Cleveland, Columbus and Cincinnati Rail Road Company, and Flavel W. Bingham, as Mayor of the City of Cleveland, and severally acknowledged the signing and sealing of the within instrument to be their several voluntary act
32 and deed for the purposes therein expressed, this 14th day of September, 1849.

JAMES D. CLEVELAND,
Justice of the Peace."

"Recd. for Record July 1, 1851.

"Recorded July 7th, 1851.

"JOHN PACKARD, *Dep. Recorder."*

This defendant says that the said sum of \$15,000.00 so mentioned in said contract, as received by said City, of the said Railroad Company, to-wit. The Cleveland, Columbus & Cincinnati Railroad Company, in the capital stock of said company, for which a certificate for one hundred and fifty shares of \$100.00 each, fully paid up, of said stock, was issued and delivered to the said city as in said contract set forth; and that no offer has ever been made by the said plaintiff to return said stock, or the said consideration so mentioned in said contract; and that these defendants under said deed and lease, and the title thus conveyed, took possession of said property in the said petition described, the same being the property described in said contract, and made valuable improvements thereon.

This defendant further says that on or about the 20th day of February, A. D. 1868, the said Cleveland, Columbus & Cincinnati Railroad Company, as party of the first part, by an agreement and lease duly executed by and between said last named company, of the first part, and The Cleveland, Painesville & Ashtabula Railroad Company, for itself, and for The Cleveland & Toledo Railroad Company, their successors and assigns, party of the second part, transferred, assigned and conveyed to the said Cleveland & Toledo Railroad Company, and the said Cleveland, Painesville & Ashtabula Railroad Company, the right to use and occupy all of that portion of the ground in said plaintiff's petition described, now occupied or used by them, and in their possession, for a valuable consideration which is in said lease and agreement set forth and described, and the right to use and occupy said premises in plaintiff's petition

described, as set forth in the deed and lease hereinbefore set forth by copy.

This defendant says that it is the successor of The Cleveland, Painesville & Ashtabula Railroad Company, and The Cleveland & Toledo Railroad Company, by consolidation, and is the owner of all property thus vested in said companies by said agreement; and this defendant says that it is the owner of a line of railroad from the City of Chicago, in the State of Illinois, passing through the State of Indiana, Ohio, Pennsylvania and New York, to the City of Buffalo, in the State of New York; and that said line of rail-

33 road, so owned by it as aforesaid, in passing through the State of Ohio, passes through, on and over the land described in plaintiff's petition, and that the tracks upon said land described in plaintiff's petition is a part of said continuous line of railroad.

This defendant further says that for the purpose of maintaining its said line, and not only making the same profitable to itself, but convenient and profitable to the citizens of the State of Ohio, as well as those of adjoining states, it, upon the faith of said deed and lease from said city, expended large sums of money in building a passenger depot near and adjacent to said land in plaintiff's petition described, amounting in all to about the sum of \$305,039.98.

That upon the faith of said deed and lease so made by said city, and the rights and privileges obtained thereby by this defendant, it expended in the building of a union freight house, and the fixtures connected therewith, about the sum of \$54,512.06. That in pier freight house improvements, made upon the faith of said right and title, so conveyed by said deed and lease, it expended about the sum of \$35,522.69.

That upon the faith of said title, so given by said city, it, this defendant, further expended in Cleveland pier freight house break-water construction, the sum of \$34,717.42.

This defendant further says that upon the faith of said title thus conveyed, it also expended the further sum, in the construction of the Cleveland yard team bridge, the sum of \$7,287.62.

This defendant says that the lands so described in plaintiff's petition, and the tracks thereon, connect the eastern portion of its line with the western, and that, relying solely upon the faith and credit of the said deed and lease, so conveying the right and title to said land so described in plaintiff's petition, for the use and occupation of defendants, for railroad purposes, and the easements thereby conveyed, this defendant expended a large sum of money, in building and constructing a bridge across the Cuyahoga River, at and adjacent to the property so described in plaintiff's petition, to-wit, the sum of \$63,650.47.

And this defendant further says that, in making its said connections, main tracks, sidings, cross-overs, crossing frogs, switches, etc., it expended the further sum of \$21,589.00.

And this defendant says that during the whole time of the making of said improvements, and the expenditure of said money, the said plaintiff quietly acquiesced, and made no claim of title or right to interfere with the use of said premises in the said petition de-

34 scribed, for railroad purposes, and in the manner in which they have been continuously used by these defendants.

And this defendant says that the said plaintiff is now estopped, after this defendant has expended the large sums of money aforesaid, in the improvement of this property, and in thus adding to the material wealth of the city, and the prosperity of the city as a commercial port, from now making claim to the possession of said property.

Defendant further says that this defendant is jointly and severally in the possession of the lands described in plaintiff's petition.

Third. And for a further and third defense to the matters and things set forth in the plaintiff's petition, this defendant says that these defendants, and those under whom they hold, have been in the continuous, uninterrupted and adverse possession of the premises described in plaintiff's petition, under claim of right and ownership, for more than twenty-one years last past, before the commencement of this action.

Fourth. And this defendant, for a fourth defense to the several matters and things set forth in plaintiff's petition, says that the said pretended cause of action in said petition described did not accrue to the plaintiff within twenty-one years before the commencement of this suit and action, and is therefore barred by the Statute of Limitations.

Wherefore this defendant prays to be hence dismissed with its costs.

DICKEY, BREWER & McGOWAN,
Attorneys for The L. S. & M. S. Ry. Co., Defendant.

(Duly verified.)

Court of Common Pleas.

Separate Amended Answer of the C., C., C. & St. L. R'y Company.

(Filed Dec. 27, 1897.)

Defense No. One. The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, one of the defendants herein, now comes and for its separate answer to the petition plaintiff admits that plaintiff is a municipal corporation and is the successor of the Village of Cleveland; that the defendant, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company is a corporation duly organized and existing under the laws of the State of Ohio, 35 and says that it is the successor to the Cleveland, Columbus, Cincinnati & Indianapolis Railway Company, and of The Cleveland, Columbus & Cincinnati Railroad Company. It admits that the defendant, The Lake Shore & Michigan Southern Railway Company is a corporation duly organized and existing under the laws of the State of Ohio; that the defendant, The Cleveland & Pittsburgh Railroad Company is a corporation duly organized and existing under the laws of the State of Ohio; and that the defend-

ant, The Pennsylvania Company is a corporation duly organized and existing under the laws of the State of Pennsylvania, and is operating a railroad from the City of Cleveland to the Ohio River, within the State of Ohio.

This defendant denies each and every allegation and averment in the petition contained not above expressly admitted to be true.

No. Two. For a further and second defense to the matters and things alleged and set forth in the petition, this defendant says that these defendants herein, and each of them, and those under whom they hold and claim, have been in the open notorious, continuous, uninterrupted, exclusive and adverse possession of the premises described in plaintiff's petition, under claim of right, title and ownership, for more than twenty-one years last past, before the commencement of this action.

No. Three. And this defendant, for a further and third defense to the several matters and things set forth and alleged in the petition, says that the pretended cause of action in said petition set forth, if it ever existed, had accrued to the plaintiff more than twenty-one years before the commencement of this action, and is, by reason thereof, barred by the Statute of Limitations, in such cases made and provided.

No. Four. The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, one of the defendants herein, now comes and files a separate fourth defense by way of further answer to the averments of the petition.

The defendant admits that the plaintiff is a municipal corporation, duly organized under the laws of the State of Ohio, being a city of the second grade of the first class, and is the successor of the Village of Cleveland, which was incorporated by an act of the General Assembly of the State of Ohio, entitled: "An Act to incorporate the Village of Cleveland," passed December 23rd, 1814.

And defendant says the City of Cleveland was incorporated under an act of the legislature of the State of Ohio, dated the 5th
36 day of March, 1836, and which act was in force on the 13th day of September, 1849, and that by virtue of said act the City Council of the City of Cleveland was authorized to fix and define the boundaries of the streets in said city, and was required to cause said streets to be surveyed, described and permanently marked and platted, and to cause plats thereof to be filed in the office of the City Clerk of said city, and said act provided when such plats of such streets had been duly made by said city, they should be conclusive as to the width of the streets and alleys designated thereon; and by such charter it is further made the duty of said city to pass all laws and ordinances necessary to benefit the trade and commerce of said city and its inhabitants.

It admits that the Cleveland, Cincinnati, Chicago & St. Louis Railway Company is a corporation duly organized under the laws of the State of Ohio, and says it is also a corporation duly organized under the laws of the State of Indiana, and owns and operates a railroad extending from the City of Cleveland, in the State of Ohio, to the City of East St. Louis, in the State of Illinois, and the City

of Cincinnati, in the State of Ohio, with branch lines extending to various points in the States of Ohio, Indiana and Illinois, and is engaged in the transportation of interstate commerce over the lines of its railroad.

Said defendant company was formed by the consolidation of various railroad companies, one of which was the Cleveland, Columbus & Cincinnati Railroad, which was organized under an act of the legislature of Ohio, dated March 13th, 1836, to build a railroad from the City of Cleveland to the City of Cincinnati, and which said act provided that said corporation should have all the powers and privileges which are by law incident to corporations of a similar character and necessary to carry into effect the objects of the company.

It admits that the defendant, the Lake Shore & Michigan Southern Railway Company, is a corporation duly organized under the laws of the State of Ohio;

That the defendant, the Cleveland & Pittsburgh Railroad Company, is a corporation incorporated by an act of the General Assembly of the State of Ohio, passed March 14th, 1836 (34 O. L., 576).

That the defendant, the Pennsylvania Company, is a corporation organized under the laws of Pennsylvania, and is operating a railroad from the City of Cleveland to the Ohio River, within the State of Ohio.

37 This defendant admits that the defendants named in said petition are in the possession of the land described therein, and it avers that the lands described in said petition were never used as a street by the public before the incorporation of the Village of Cleveland in 1814, nor after that time, nor by said village, nor said city, and said ground was never accepted as a street by the Village of Cleveland, or by the plaintiff herein, or by any other person or body having authority to accept the same. And defendant says that on the 4th day of February, 1845, in pursuance of the powers vested in said plaintiff by its charter then in force, and of the duty imposed upon it by the laws of Ohio, the City of Cleveland filed a plat of Bath street in the office of the City Clerk of said city, laying off Bath street, permanently defining and fixing the boundaries thereof; that by said plat made by said city and filed in the office of the City Clerk, the boundaries of Bath street were fixed and defined as a strip of ground one hundred feet in width south of the south line of the land described in the petition, which street was afterwards improved and called Front street.

And defendant further avers that by said plat the land in controversy described in said petition north of the line of Bath or Front street, as fixed and defined by said plat, was laid off by said plaintiff into thirty-one lots, and that said city leased said lots to various persons for terms of years, to carry on various kinds of business; and that said lots were occupied by said lessees to carry on their business under said leases at the time of making of the contract of the 13th of September, 1849, hereinafter set forth.

That the Cleveland, Columbus & Cincinnati Railroad Company,

of which this defendant is the successor, was incorporated to build a railroad from the City of Cleveland to the City of Columbus;

The Cleveland & Pittsburgh Railroad Company was incorporated to build a railroad from the City of Pittsburgh to the City of Cleveland:

The Cleveland, Painesville & Ashtabula Railroad Company was incorporated to build a line of railroad from Cleveland easterly.

And it was necessary to enable said railroads to successfully carry out the objects for which they were organized, and facilitate interchanging business between themselves and vessels upon the lake, both for their own advantage and for the benefit of the trade and commerce of the City of Cleveland and its inhabitants, that
38 they should have the right to occupy ground in the City of Cleveland and fronting upon the lake.

Defendant says that at or about the 13th day of September, 1849, after the boundaries of Bath street had been fixed and defined by the City Council of the City of Cleveland as above set forth, and after the ground in controversy described in the petition had been platted by the city into thirty-one lots and leased to various persons for terms of years, and whilst said land was so occupied by such lessees, the Cleveland & Pittsburgh Railroad Company asserted a title to the ground in said petition set forth, and certain other claimants asserted title to portions of said real estate in said petition set forth; and the said plaintiff, for the benefit of the commerce of said City of Cleveland and of its inhabitants, and to furnish to this defendant, together with the other defendants herein, ground bordering upon the lake, necessary to furnish proper facilities for carrying on such commerce and interchanging business with each other, by F. W. Bingham, then Mayor of said city, duly authorized by resolution of the City Council of said City of Cleveland, duly executed, acknowledged and delivered to the Cleveland, Columbus & Cincinnati Railroad Company, in consideration of \$15,000 of the capital stock of said company, a deed of contract by which, in consideration of the sum of \$15,000 received by said city of said railroad company in the capital stock of said company, for which a certificate for 150 shares at \$100 each, fully paid up of said stock, was issued to said city by said Cleveland, Columbus & Cincinnati Railroad Company, and for other considerations named in said instrument, the said city granted to said railroad company as fully and absolutely as said city, or the constituted authorities thereof, had the power or legal authority so to do, the right to the full and perpetual use and occupancy for their railroad tracks, turn-outs, engines, cars and passenger houses, turn-tables, water tanks or stations, avenues to and from the same, and for other purposes connected with and necessary for the convenient use and working of said railroad, all of the real estate described in said petition; and it was agreed in said conveyance that said Cleveland, Columbus & Cincinnati Railroad Company should manage and take care of all suits or actions then pending or thereafter commenced for obtaining possession of said premises or any part thereof, and with power to compromise or settle

39 such suits, and said company should save the city harmless from all costs and charges on account thereof, and from all legal claims against said city growing out of the occupation of said premises by said city or its tenants or lessees. Said conveyance was made subject to the claims of the Cleveland & Pittsburgh Railroad Company upon said real estate, and the claims of all other persons; and this defendant was to have the benefits to accrue from such claimants from such claims; that this defendant was, by said agreement, to extend to the Cleveland & Pittsburgh Railroad Company and the Cleveland, Painesville & Ashtabula Railroad Company, room for warehouse and passenger depots and such facilities for coming on said premises with their cars, engines and tenders, for the reception and delivery of passengers, baggage and freight, and for transferring them to or receiving them from other railroads or from steamboats, either by independent tracks or by the use of the tracks laid by the Cleveland, Columbus & Cincinnati Railroad Company, as should be found most convenient, a copy of which agreement is filed herewith as "Exhibit A."

And this defendant says that said sum of fifteen thousand dollars so mentioned in said contract, as received by said city of the Cleveland, Columbus & Cincinnati Railroad Company in the capital stock of said company, was paid to the plaintiff by a certificate of one hundred and fifty shares of one hundred dollars each, fully paid up, which said stock was issued and delivered to said city as in said contract set forth, and that no offer has ever been made by said plaintiff to return said stock, or the said consideration so mentioned in said contract or deed.

And this defendant further says that by virtue of said contract, it entered into possession of said property in said petition described, and laid tracks and located structures necessary to carry on its business, and made valuable improvements thereon, claiming "the right to the full and perpetual use and occupancy of the same for its railroad tracks, turnouts, engines, cars, passenger houses, turn-tables, water-tanks or stations or avenues to the same, and for other purposes connected with and necessary for the convenient use and working of said railroad;" and that afterwards it admitted the other railroad companies into the occupancy and possession of said ground, as set forth in said contract, and that these defendants have had continuous, notorious, uninterrupted, exclusive and adverse possession of the premises described in the plaintiff's petition under claim of right, title and ownership since 1849, and more than forty years before the commencement of this action, and that they

40 have paid the taxes upon the same during such period, and have expended large sums of money in laying tracks and building structures on said real estate, and making permanent improvements thereon necessary to carry on their business and for the benefit of the commerce of said city, and in protecting the said ground from the action of the lake.

And it states that the tracks laid and structures built by them and permanent improvements made, have all been made upon the faith of their exclusive right to possess and use and enjoy the prop-

erty in the petition described, fully and perpetually, for the purposes in said deed or contract set forth;

That these structures and improvements are of a permanent character, and have been constructed from time to time as they were made necessary by the growing commerce of the City of Cleveland; and that during said period since 1849, while these improvements have been made, and these large sums of money have been expended by these defendants upon said real estate, in order to enable them to perform their duties to the public, including the City of Cleveland, as carriers of said interstate commerce, the plaintiff, with full knowledge that this defendant and the other defendants claimed the legal right to use fully, perpetually and exclusively said ground for the purposes named in said contract, and with full knowledge of the fact that the said investments were of a permanent character, and were made by the defendant relying upon said contract, and in full faith that said defendants had the permanent and exclusive right to use said real estate for the purposes of its railroad, the plaintiff stood by and allowed said improvements to be made by this defendant, and said moneys to be expended in such permanent investments from which they could not be withdrawn, without the assertion of any claim to the ownership of said ground on its part, and without objection, and said city acquiesced in the claim of this defendant of the right to perpetually use and enjoy said grounds for the purposes mentioned in said contract; and during said time it neither returned nor offered to return the fifteen thousand dollars of stock issued to it by this defendant; and, knowing that defendant was investing large sums of money in permanent improvements upon said ground relying in full faith upon said contract, and the right therein granted to it to use said ground fully and perpetually

41 for railroad purposes, accepted dividends on said stock, and never offered to return said stock nor to repay said fifteen thousand dollars to this defendant, but held said stock, and accepted dividends thereon, and allowed this defendant, during all this period, to pay the taxes upon said property, knowing that this defendant was making permanent investments which could not be withdrawn upon said real estate, and was relying in full faith upon its right to the perpetual use and enjoyment thereof, and said plaintiff collected from this defendant the taxes levied upon said real estate for the benefit of said plaintiff.

And this defendant states that on the 14th of November, 1863, the Cleveland, Columbus & Cincinnati Railroad Company, the Cleveland & Pittsburgh Railroad Company, the Cleveland, Painesville & Ashtabula Railroad Company, and the Cleveland & Toledo Railroad Company, relying upon the right to fully and perpetually use and occupy the real estate in the petition described, entered into an agreement to erect a union station of a permanent and substantial character, at large cost, at the foot of Water and Bank streets, in the City of Cleveland, adjacent to the property in the petition described, and which could only be reached by said railroad companies through and over the ground in the petition described, and of which said railroad companies had then had continuous, exclu-

sive, notorious and adverse possession since 1849, and relying upon the right to the ownership and exclusive use of said ground, they proceeded to construct such union station, and the plaintiff stood by, knowing that the defendants claimed the ownership of the real estate in the petition mentioned; and the right to the exclusive use of the same, and that they could not reach said station without the use of such real estate, and permitted said defendants to construct said union station, costing large sums of money, to-wit, \$300,000, and asserted no claim to the said real estate in the petition mentioned, made no objection to the use thereof, but acquiesced in the claim and right of these defendants to occupy and use the same fully and perpetually.

And this defendant shows that it would be now impossible for these defendants to acquire other real estate in the City of Cleveland for the purpose of making interchanges between the several railroads and the vessels upon the lake, in carrying on interstate commerce, or for the purpose of reaching the Union station in said city.

And, on the 15th day of October, 1868, the City of Cleveland entered into a contract with the Lake Shore & Michigan
42 Southern Railway Company and the Cleveland, Columbus, Cincinnati & Indianapolis Railroad Company, of which the defendant herein is successor, by which the said companies agreed to grade and improve Front street, being the same street as Bath street, according to the plat of 845, hereinbefore set forth, and as therein defined and bounded between the government pier and Water street, and to pay one-half the expense thereof, in consideration of being allowed to use all that portion of said Front street lying northerly of a line parallel with the southerly line of said street and seventy-five feet therefrom, and extending to the westerly line of Spring street, and these defendants at the time of entering into such contract, as said plaintiff well knew, relied upon their exclusive right to the permanent use of the real estate in controversy, and made this improvement, and paid one-half the cost thereof solely upon the faith of their right to the full and exclusive use of the ground in the petition set forth, and for the better enjoyment thereof; all of which was well known to plaintiff when said contract was made, and said street improved and the improvement paid for by these defendants.

And yet, plaintiff, with such knowledge, induced and contracted with these defendants to make such improvement of Front or Bath street, and pay for the same under said contract, without the assertion of any claim whatever to the use of the real estate in the petition described.

Defendant further states that on the 3rd day of January, 1879, plaintiff entered into an agreement with the Cleveland, Columbus, Cincinnati & Indianapolis Railway Company, the predecessor of this defendant, duly executed by R. R. Herrick, Mayor, in pursuance of an ordinance duly passed by the City Council of said city, on the 2nd day of June, 1879, granting to said company the right to occupy a portion of Front street, which is the same street as Bath street, according to the plat filed by said city, hereinbefore set forth

in 1845, in consideration that said company should pave or plank that portion of said street covered by the roadbed of said track and switch, and keep the same so paved and planked in constant good repair, and attached to said contract a map or plat defining and bounding Front street, and locating the same wholly south of the real estate in the petition mentioned, and said plaintiff at the time of making such contract knew that said railroad company of which this defendant is successor, was laying said track for the purpose of using and enjoying the real estate in the petition described, and was making other improvements on said real estate relying in full faith upon its ownership thereof, and yet plaintiff, with such knowledge, executed such contract and plat, of which a copy is filed herewith as "Exhibit B."

And this defendant says, that after having made the contract above set forth, and received and kept the consideration named therein, and having stood by and acquiesced in the right of this defendant and its co-defendants to the exclusive use of said real estate, and permitted them to make permanent and valuable improvements thereon, under such claim of ownership, and having stood by and allowed defendants to construct depots and warehouses and piers and make connections for the transfer of trains and freight upon and over said property, and to expend large sums in the erection of a union passenger station, which could only be reached through and over this ground, and having allowed defendants to remain in actual, exclusive, open, notorious, and continuous adverse possession of the same under the claim of the exclusive and perpetual right to use the same for the purposes for which they were organized, for more than forty years, it has become impossible for defendant to procure other suitable and fit grounds upon which to make connections with the lake vessels and other railroads, and to reach the union station in said City of Cleveland, said plaintiff is estopped and concluded from asserting the claim to said ground set up in said petition.

JNO. T. DYE,

GOULDER & HOLDING,

Attorneys for the C., C. & St. L. Ry. Co.

(Duly verified.)

"EXHIBIT A."

"This indenture, made this 13th day of September in the year of our Lord one thousand eight hundred and forty-nine, by and between the City of Cleveland, by F. W. Bingham, mayor of said city, thereunto duly authorized by resolution of the city council of said city, party of the first part, and the Cleveland, Columbus and Cincinnati Railroad Company, by John M. Woolsey, vice president thereof, thereunto duly authorized by resolution of the board of directors of said company, party of the second part, witnesseth:

That said City of Cleveland, in consideration of the sum of fifteen thousand dollars received by said city of said railroad company, in the capital stock of said company, for

which a certificate for one hundred and fifty shares of one hundred dollars each, fully paid of said stock hath been issued to said city, the receipt whereof is hereby acknowledged, and also in consideration of the covenants of said railroad company hereinafter contained, hath granted, and by these presents doth grant to said railroad company as fully and absolutely as said city or the constituted authorities thereof have the power or legal authority so to do, the right to the full and perpetual use and occupancy, for their railroad tracks, turn outs, engines, cars and passenger houses, turn tables, water tanks, or stations, avenues to and from the same, leaving open spaces between then deemed expedient, and other purposes connected with and necessary for the convenient use and working of said railroad. All of Bath street in said City of Cleveland, situate northwesterly of a line drawn parallel with the southerly line of Bath street and one hundred and thirty-two feet northwesterly at right angles therefrom. Excepting and reserving therefrom, a piece or parcel bounded southerly by the last described line, easterly by a line drawn parallel with the westerly face of the stone pier so-called and one hundred (100) feet easterly therefrom and northwardly by a line drawn parallel with the south line of Bath street and two hundred and eighty-two (282) feet northwardly therefrom, which is reserved for public use as part of Bath street, and also reserving and excepting therefrom, a strip of twenty-five feet in width bounded westerly by the west face of said pier, and easterly by a line parallel therewith and twenty-five feet therefrom and extending from the northerly line of said last described parcel of land along said pier to the northwardly end thereof, as it now is or may be hereafter extended, which is to be kept open as a public highway and shall not be obstructed by said city, or by any person or persons or company claiming through said city or by their permission.

To have and to hold the same to the said railroad company, its successors and assigns, upon the terms and subject to the stipulations and conditions following—that is to say, said company shall take and hold the same subject to all legal claims, either in law or equity of any person or persons, company or companies.

It being expressly understood that the city does not guarantee nor warrant either the title or the right to occupy the same. The said railroad company to have all the money compensation, interest, benefits and rights which the city could in any manner be entitled on account thereof. Said company shall save said city harmless from all damages to persons holding any part or parts of the premises under leases from the city, consequent upon the taking possession of the ground so leased, or in any way depriving them of the full enjoyment of their leasehold interests before the expiration thereof, it being understood that this indemnification is to extend to such damages only as the city shall be legally holden to make good to the claimants thereof. All leases made by the city of parts of said premises shall be assigned to said company, said company to have the right to collect and receive the rents hereafter accruing, and shall pay over to said city, two-thirds of all

rents collected on land fronting on the river and lying between the south line of Bath street and a line parallel therewith and 282 feet northwardly therefrom until said company shall deliver to said city the possession of said strip of 100 feet in width next the pier hereinbefore reserving.

And the said company shall not renew or extend said lease nor grant any new lease of any part of the premises which will interfere with the opening of Bath street to the width of 132 feet, or of the extension thereof on or near the stone pier as hereinbefore described. The said company shall not lease any part of the premises to any person or persons, company or companies to be used for conducting or carrying on forwarding, storage or commission business—or for the erection of warehouses thereon for the accommodation of such business, nor shall any company use said premises or any part thereof for the purpose of engaging in accommodating or aiding in the transaction of forwarding, commission or warehousing business, with a view either directly or indirectly of deriving profit therefrom, nor shall they grant the right to any railroad company, person or persons or other company or companies so to do.

But this prohibition shall not be construed to prevent said railroad company from erecting on said premises a suitable warehouse or warehouses for the reception and safe keeping of such article of property as may be entrusted to their care for transportation and not consigned to any person or persons or company in Cleveland having the means of storing the same.

46 It being the object and intent of the parties to this agreement to provide that said premises shall not be so used as to interfere or come in competition with individuals, companies or firms in forwarding, commission, storage or warehouse business in Cleveland, by carrying on or engaging in by said company accommodating or aiding in forwarding, commission or storage, warehousing or other business not necessary to secure the transportation of property over their road, but may be used by said company for all purposes necessary for the convenient or profitable working of their road, subject to the restrictions aforesaid, said company to take and hold said land subject to all the legal rights and claims of the Cleveland and Pittsburgh Railroad Company upon the same, and to have all the benefits to accrue from such claimants as is before provided. And as a further provision for the same, shall upon reasonable and equitable terms extend to said Cleveland and Pittsburgh Railroad Company, and the Cleveland and Painesville and Ashtabula Railroad Company, room for warehouse and passenger depots and such facilities for coming onto said premises with their cars, engines and tenders, for the reception and delivery of passengers, baggage and freight subject to the same restrictions as to warehousing, forwarding and commission business as one herein imposed upon the Cleveland, Columbus & Cincinnati Railroad Company, and for transferring them to or receiving them from other railroads or from steamboats, either by independent tracks or by the use of the tracks laid by the Cleveland, Columbus & Cincinnati

Railroad Company, as shall be found most convenient to all concerned, and in case the parties cannot agree either as to the terms or manner of occupying such parts of the premises as may be so required—the same shall be determined by three competent, disinterested men, one to be chosen by each party, and the third by the two so chosen. It being, however, understood, that the Cleveland, Columbus & Cincinnati Railroad Company, shall not be bound to permit either of said railroad companies to use for car, engine or warehouses or grounds on which to place or dispose of cars, engines, tenders or other furniture of their roads, any part of said premises which said arbitrators shall decide as necessary for these purposes, to be used exclusively by said Cleveland, Columbus & Cincinnati Railroad Company.

It being further understood and agreed, that no part of said premises shall, after two years from this date be used by said Cleveland, Columbus & Cincinnati Railroad Company for forge purposes, work shops or anything of a similar nature, for the manufacture of cars, engines or other machinery, so as to deprive either of said
47 other railroad companies of the full benefit of the use of part of said premises intended by this agreement to be extended to them.

Said Cleveland, Columbus & Cincinnati Railroad Company shall manage and take care of all suits or actions now pending or which may be hereafter commenced for obtaining possession of said premises or any part thereof, and may compromise or settle such suits and said company shall save the city harmless from all costs and charges on account thereof, except such as have already accrued against said city, and in case of settlement, shall save the city harmless from all legal costs in the case in court on Bank—except the costs made by the city. And shall further save the city harmless from all legal claims or demands, which are now or may hereafter be set up against the city, growing out of the use or occupation of said premises by said city or its tenants or lessees.

And to enable said company to compromise and settle with the claimants, Lloyd & Camp and all other claimants for the extinguishment of their claims to said premises or any part thereof they may allow them to retain such portion thereof as may be necessary to affect such settlement and as shall not be deemed necessary to be used for railroad purposes, and the said Cleveland, Columbus & Cincinnati Railroad Company doth hereby covenant and agree to and with said city, that said company will hold said premises upon the terms and subject to the stipulations and conditions herein recited, and will do and perform all and singular, the acts required, and abstain from doing and performing all and singular the acts prohibited by the terms and stipulations herein recited—

In witness whereof the city council of said City of Cleveland have caused to be herewith affixed the seal of said city and these presents to be subscribed by the mayor thereof.

And the Cleveland, Columbus & Cincinnati Railroad Company have caused to be hereto affixed, their corporate seal, and these

presents to be subscribed by their vice president, the day and year first above written.

THE CITY OF CLEVELAND,
By FLAVEL W. BINGHAM, *Mayor*.
[CORPORATE SEAL.]

THE CLEVELAND, COLUMBUS AND
CINCINNATI RAILROAD COM-
PANY,
[SEAL.] By JNO. M. WOOLSEY, *Vice-President*.

48 Signed, sealed and delivered the words Alfred Kelley on the 6th line of first page, being first erased and the words John H. Woolsey, vice- interlined above such erasure. Also the word vice- being first interlined above the second line from the bottom of the last page.

In presence of
J. D. CLEVELAND.
D. W. CROSS.

THE STATE OF OHIO,
Cuyahoga County, ss:

Before me, James C. Cleveland, justice of the peace in and for said county, personally appeared, the within named John M. Woolsey, as vice president of the Cleveland, Columbus & Cincinnati Railroad Company, and Flavel W. Bingham, as mayor of the City of Cleveland, and severally acknowledged the signing and sealing of the within instrument to be their several voluntary act and deed for the purposes therein expressed this 14th day of September, 1849.

JAMES D. CLEVELAND,
Justice of the Peace.

Received for record July 1, 1851.
Recorded July 7th, 1851.

JOHN PACKARD,
Dep. Recorder."

"EXHIBIT B."

This agreement made and entered into this 3rd day of June, 1879, by and between the City of Cleveland and the Cleveland, Columbus, Cincinnati & Indianapolis Railroad Company. Witnesseth:

That the said City of Cleveland has granted, and does hereby, in pursuance of an ordinance of said city, passed June 2nd, 1870, give and grant to said railroad company the right to occupy an additional portion of Front street by the extension of its north line of track as now laid in said street, by a switch connecting with said track at a point about two hundred and fifty feet from the dock line at the westerly terminus of said street at Cuyahoga river, and extending westerly through said street with a radius in a northerly

direction to the dock line aforesaid. The rights herein granted to be enjoyed by said company during the pleasure of the council.

And the said Cleveland, Columbus, Cincinnati & Indianapolis Railroad Company in consideration of the rights and privileges so as above granted and conveyed, hereby stipulate and agree to and with said city to pave or plank that portion of said street covered

by the road bed of said track and switch to a uniform level
49 and grade with the paved portion of said street bordering upon said road bed, and thereafter to keep said portion of said street so paved and planked in constant good repair and condition and said company hereby agrees as between said company and said city to be answerable to persons and the owners of property in any way damaged by reason of the use or occupancy of said street by such track or switch, or from the cars and locomotives operated thereon, and to save the city harmless from the results of such use and occupancy aforesaid.

In witness -hereof the said parties have caused this agreement to be by them subscribed, and their respective seals to be hereunto affixed as of the day and year first above named.

[CITY SEAL.]

R. R. HERRICK, *Mayor*.

THE CLEVELAND, COLUMBUS, CINCINNATI & INDIANAPOLIS RAILWAY COMPANY.

By J. H. DEVEREUX, *Pres't*.

Court of Common Pleas.

Reply to Answer of The Cleveland and Pittsburgh Railroad Company.

(Filed Oct. 30, 1897.)

First Reply.

For a first reply to the second and third defenses in the answer of The Cleveland & Pittsburgh Railroad Company, plaintiff says: In the year 1796, the land described in the petition was part of a large body of land, contiguous thereto on all sides, bounded on the northerly side thereof by Lake Erie, and owned in fee by the Connecticut Land Company. By a survey and plat, duly made in said year, and by a re-survey and a second plat, duly made in the year 1801, and duly recorded, the said Connecticut Land Company caused the village of Cleveland (now a part of the City of Cleveland, plaintiff herein), to be laid out and established. Among the streets thereby laid out, dedicated and established, is what was then designated and known as Bath street, (now called Front street), extending from the Cuyahoga river on the west, to the westerly line of Water street on the east, and from the northerly line of lot 191 of said village on the south, to Lake Erie on the north.

The said Lake Erie is situate between the United States and the Colonial possessions of Great Britain, and in said year 1796 was,

and ever since has been, a great public highway, navigable
50 for vessels of all burden, and has been navigated by both
foreign and domestic vessels, during all the time aforesaid.
Said lake, as such public highway, is very largely used for the
carrying on of the trade and commerce of the country. The said
City of Cleveland, situate on the southerly shore of said lake, is a
large and growing city, whose people are extensively engaged in
trade and commerce, and are in very large degree dependent, for
the carrying on of their business, and for the continued prosperity
of their city, upon the trade and commerce carried on by means of
said lake; and free and convenient landings, or connections between
the highways of said city and the navigable waters of said lake, are
indispensable to the full and free use of the said lake, as a public
highway, by the people of said city. Said Bath street, as laid out
and dedicated as aforesaid, bordering its entire length on said lake,
and being both a street and a landing, was intended to furnish, and
until the wrongs of the defendants complained of in the petition,
did furnish, free and convenient means of communication with the
navigable waters of said lake, for the purposes aforesaid.

The said Cleveland & Pittsburgh Railroad Company was incorporated by an act of the general assembly of the State of Ohio, entitled, "An act to incorporate the Cleveland & Pittsburgh Railroad Company," passed March 14, 1836, (34 O. L. 576) and by a re-viving and amending act of said general assembly, entitled "An act to revive and amend the act entitled 'An act to incorporate the Cleveland & Pittsburgh Railroad Company,' passed March 14, 1836," passed March 11, 1845 (43 O. L. 401). By said acts it is provided that the railroad to be constructed by said company should not exceed 100 feet in width, and should commence at a convenient place in the City of Cleveland, and run thence, by the most direct and practicable route, to the most suitable point on the Ohio river. It was thereby further provided, "That whenever, in the construction of said road, it shall be necessary to cross or intersect any established road or way, it shall be the duty of the said president and directors of said company so to construct the said railroad across such established road or way, as not to impede the passage or transportation of persons or property along the same."

Without authority other than that conferred by the said acts of the legislature, and in violation of the provisions thereof, the said
defendant has constructed and maintains numerous build-
51 ings, tracks, switches, turnouts, and other structures, on the
said part of said street; and in and by the construction and
maintenance thereof, the said defendant excludes this plaintiff and
the public from all of said part of said street, and obstructs said
street and prevents travel thereon, and prevents the public from
having access to said lake by means of said street, and prevents this
plaintiff from the exercise of its rights to control said street, and
from the discharge of its duty to keep the same open, in repair, and
free from nuisance.

Second Reply.

For a second reply to the second and third defenses in the answer of the Cleveland & Pittsburgh Railroad Company, plaintiff makes all that part of the foregoing first reply, beginning with the words and figures "In the year 1793," and ending with the words "or property along the same," a part of this reply, and further says, that said the Cleveland & Pittsburgh Railroad Company entered into the occupancy of that part of said Bath street described in the petition, under and by virtue of the said provisions in its said charter, and by the permission of the said City of Cleveland, for the sole purpose of locating its tracks and line of railroad on and across the same, subject at all times to the said obligation of said company so to construct its said railroad on and across said street as not to impede the passage or transportation of persons or property along the same, and subject at all times to the paramount right of this plaintiff to the possession and control of all of said street for street purposes, and subject to the exercise of the right and duty of plaintiff to improve said street, when in its judgment necessary, and to keep the same open, in repair, and free from nuisance.

Third Reply.

For a third reply to the second and third defenses in said answer of the Cleveland & Pittsburgh Railroad Company, plaintiff denies each and every allegation therein contained.

Fourth Reply.

For a fourth reply to the third defense in said answer of the Cleveland & Pittsburgh Railroad Company, plaintiff says, that during the time that said defendant, or said defendant and those under whom it claims, have possessed, occupied and used the part of Bath street described in the petition, or any part thereof, such
52 possession, occupancy and use have at no time, and in no way, been adverse to the said city.

MINER G. NORTON,
Corporation Counsel;
JAMES LAWRENCE,
GEORGE L. PHILLIPS,
Special Counsel,
Attorneys for Plaintiffs.

(Duly verified.)

Court of Common Pleas.

Reply to Answer of Pennsylvania Company.

(Filed Oct. 30, 1897.)

First Reply.

For a first reply to the second and third defenses in the answer of said defendant, Pennsylvania Company, plaintiff says: In the year 1796, the land described in the petition was part of a large body of land, contiguous thereto on all sides, bounded on the northerly side thereof by Lake Erie, and owned in fee by the Connecticut Land Company. By a survey and plat, duly made in said year, and by a resurvey and second plat, duly made in the year 1801, and duly recorded, the said Connecticut Land Company caused the village of Cleveland (now a part of the City of Cleveland, plaintiff herein), to be laid out, and established. Among the streets thereby laid out, dedicated and established, is what was then designated and known as Bath street (now called Front street), extending from the Cuyahoga river on the west, to the westerly line of Water street on the east, and from the northerly line of lot 191 of said village on the south, to Lake Erie on the north.

The said Lake Erie is situated between the United States and the Colonial possessions of Great Britain, and in said year 1796, was, and ever since has been, a great public highway, navigable for vessels of all burden, and has been navigated by both foreign and domestic vessels, during all the time aforesaid. Said lake, as such public highway is very largely used for the carrying on of the trade and commerce of the country. The said City of Cleveland, situate on the southerly shore of said lake, is a large and growing city, whose people are extensively engaged in trade and commerce, and are in very large degree dependent, for the carrying on of their business and for the continued prosperity of their city, upon

53 the trade and commerce carried on by means of said lake; and free and convenient landings or connections between the highways of said city and the navigable waters of said lake, are indispensable to the full and free use of said lake, as a public highway, by the people of said city. Said Bath street, as laid out and dedicated as aforesaid, bordering its entire length on said lake, and being both a street and a landing, was intended to furnish, and until the wrongs of the defendants complained of in the petition, did furnish, free and convenient means of communication with the navigable waters of said lake, for the purposes aforesaid.

The said defendant, Pennsylvania Company, is the lessee of its co-defendant, the Cleveland & Pittsburgh Railroad Company, and has leased from it, and is now maintaining and operating, a line of railroad hereinafter referred to, constructed and owned by said lessor; and as such lessee, the said Pennsylvania Company has the

same rights with reference to said street that its said lessor had, and no more.

The said Cleveland & Pittsburgh Railroad Company was incorporated by an act of the general assembly of the State of Ohio, entitled "An act to incorporate the Cleveland & Pittsburgh Railroad Company," passed March 14, 1836, (34 O. L. 576), and by a reviving and amending act of said general assembly, entitled "An act to revive and amend the act entitled 'An act to incorporate the Cleveland & Pittsburgh Railroad Company,' passed March 14, 1836," passed March 11, 1845 (43 O. L. 401). By said acts it is provided that the railroad to be constructed by said company should not exceed one hundred feet in width, and should commence at a convenient place in the city of Cleveland, and run thence, by the most direct and practical route to the most suitable point on the Ohio river. It was thereby further provided, "that whenever, in the construction of said road, it shall be necessary to cross or intersect any established road or way, it shall be the duty of the said president and directors of said company so to construct the said railroad across such established road or way, as not to impede the passage or transportation of persons or property along the same."

Without authority other than that conferred by the said acts of the legislature, and in violation of the provisions thereof, the said defendant Pennsylvania Company, has constructed and
54 maintained numerous buildings, tracks, switches, turnouts, and other structures, on the said part of said street; and in and by the construction and maintenance thereof, the said defendant excludes this plaintiff and the public from all of said part of said street, and obstructs said street and prevents travel thereon, and prevents the public from having access to said lake by means of said street, and prevents this plaintiff from the exercise of its right to control said street, and from the discharge of its duty to keep the same open, in repair, and free from nuisance.

Second Reply.

For a second reply to the second and third defenses in the answer of the said Pennsylvania Company, plaintiff makes all that part of the foregoing first reply, beginning with the words and figures, "In the year 1796," and ending with the words, "or property along the same," a part of this reply, and further says, that said Pennsylvania Company entered into the occupancy of said part of said Bath street, as lessee of said the Cleveland & Pittsburgh Railroad Company, and under and by virtue of the said provisions in the said charter of its said lessor, and by the permission of the said City of Cleveland, and has occupied the same subject at all times to the said charter obligation of its said lessor (which obligation it assumed as lessee) so to construct and maintain said railroad on and across said street as not to impede the passage or transportation of persons or property along the same, and subject at all times to the paramount right of this plaintiff to the possession and control of all of said street for street purposes, and subject to the exercise of the right and duty of plain-

tiff to improve said street, when in its judgment necessary, and to keep the same open, in repair, and free from nuisance.

Third Reply.

For a third reply to the second and third defenses in said answer of said Pennsylvania Company, plaintiff denies each and every allegation therein contained.

Fourth Reply.

For a fourth reply to the third defense in said answer of said Pennsylvania Company, plaintiff says, ~~that~~ during the time that said defendant, or said defendant and ~~these~~ under whom it claims, have possessed, occupied and used the part of Bath street 55 described in the petition, or any part thereof, such possession, occupancy and use have at no time, and in no way, been adverse to the said city.

MINER G. NORTON,
Corporation Counsel;
JAMES LAWRENCE,
GEORGE L. PHILLIPS,
Special Counsel,
Attorneys for Plaintiff.

(Duly verified.)

Court of Common Pleas.

Reply to Amendment to Answer of Cleveland & Pittsburgh Railroad Company.

(Filed Jan. 7, 1898.)

Now comes the plaintiff and for reply to the amendment to the answer of the Cleveland & Pittsburgh Railroad Company says: It admits that at one time it placed sundry persons in possession of portions of the lands described in the petition under contracts of lease; that at different times divers actions have been brought by sundry persons, which actions involve the title to different portions, but not to all, of the lands described in the petition; that on or about the 30th of September, 1849, the City and the Cleveland, Columbus & Cincinnati Railroad Company entered into a contract with reference to the occupancy of a portion of the land described in the petition, and that by the terms of said agreement the City was to receive and did receive the sum of \$15,000.00; that this defendant company has made sundry improvements upon parts of said lands and that it has expended money in attempts to procure title to portions of said land by conveyances from sundry persons.

And plaintiff denies all else that is alleged in said amendment.

MINER G. NORTON,
Corporation Counsel;
JAMES LAWRENCE,
GEORGE L. PHILLIPS,
Special Counsel,
Attorneys for Plaintiff.

(Duly verified.)

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Court of Common Pleas.

Reply to Amendment to Answer of Pennsylvania Company.

(Filed Jan. 7, 1898.)

Now comes the plaintiff and for reply to the amendment to the answer of the Pennsylvania Company says: It admits that at one time it placed sundry persons in possession of portions of the lands described in the petition under contracts of lease; that at different times divers actions have been brought by sundry persons which actions involve the title to different portions, but not to all, of the lands described in the petition; that on or about the 13th of September, 1849, the city and the Cleveland, Columbus & Cincinnati Railroad Company entered into a contract with reference to the occupancy of a portion of the land described in the petition, and that by the terms of said agreement the City was to receive and did receive the sum of \$15,000.00; that this defendant company has made sundry improvements upon parts of said lands and that it has expended money in attempts to procure title to portions of said land by conveyances from sundry persons; that this defendant company entered into contract with the Cleveland & Pittsburgh Railroad Company by which it leased from the latter company sundry property, and that as such lessee, and in respect of the property so leased, it has expended money.

And plaintiff denies all else that is alleged in said amendment.

MINER G. NORTON,

Corporation Counsel;

JAMES LAWRENCE,

GEORGE L. PHILLIPS,

*Special Counsel,**Attorneys for Plaintiff.*

(Duly verified.)

Court of Common Pleas.

Reply to the Amended Answer of The Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

(Filed Jan. 7, 1898.)

First Reply.

For a first reply to the second and third defenses in the amended answer of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, plaintiff says: In the year 1796, the land described in the petition was part of a large body of land, contiguous thereto on all sides, bounded on the northerly side thereof by Lake Erie, and owned in fee by the Connecticut Land Company. By a survey and plat, duly made in said year, and by a

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resurvey and second plat, duly made in the year 1801, and duly recorded, the said Connecticut Land Company caused the village of Cleveland (now a part of the city of Cleveland plaintiff herein) to be laid out and established. Among the streets thereby laid out, dedicated and established, is what was then designated and known as Bath street (now called Front street), extending from the Cuyahoga river on the west, to the westerly line of Water street on the east, and from the northerly line of lot 191 of said village on the south, to Lake Erie on the north.

The said Lake Erie is situate between the United States and the Colonial possessions of Great Britain, and in said year 1796 was, and ever since has been, a great public highway, navigable for vessels of all burden, and has been navigated by both foreign and domestic vessels, during all the time aforesaid. Said lake, as such public highway, is very largely used for the carrying on of the trade and commerce of the country. The said city of Cleveland, situate on the southerly shore of said lake, is a large and growing city, whose people are extensively engaged in trade and commerce, and are in very large degree dependent, for the carrying on of their business and for the continued prosperity of their city, upon the trade and commerce carried on by means of said lake; and free and convenient landings or connections between the highways of said city and the navigable waters of said lake, are indispensable to the full and free use of the said lake as a public highway, by the people of said city. Said Bath street, as laid out and dedicated as aforesaid, bordering its entire length on said lake, and being both a street and a landing, was intended to furnish, and until the wrongs of the defendants complained of in the petition, did furnish, free and convenient means of communication with the navigable waters of said lake, for the purposes aforesaid.

The Cleveland, Columbus & Cincinnati Railroad Company, of which the Cleveland, Cincinnati, Chicago & St. Louis Railway Company is the successor, and under which it claims any rights it has in the premises described in the petition, was incorporated by a special act of the General Assembly of Ohio, entitled "An act to incorporate the Cleveland, Columbus & Cincinnati Railroad Company," passed March 14, 1836 (34 O. L. 533), and an act entitled "An act to revive the act entitled an act to incorporate the Cleveland, Columbus & Cincinnati Railroad Company," passed March 12, 1845, (45 O. L. 405). By the terms of said acts, the said Cleveland, Columbus & Cincinnati Railroad Company was authorized to commence its railroad at some convenient point at or near the city of Cleveland, and to locate and construct the same on the most convenient route, leading towards Columbus in Franklin county. It was further provided in said acts that said corporation shall have the power to determine the width and dimensions of said railroad across or upon any road, canal, or highway, stream of water or watercourse, if the same shall be necessary, but that the said corporation shall restore such road, canal, highway, stream of water or watercourse, thus intersected or crossed, to its former state of use-

fulness, or in such manner as not to impair its convenience, usefulness or value, to the owners or the public.

Without authority other than that so conferred by the said acts of the legislature, and in violation of the provisions thereof, the said defendant has constructed and maintained numerous buildings, tracks, switches, turnouts and other structures, on the said part of said street; and in and by the construction and maintenance thereof, the said defendant excludes this plaintiff and the public from all of said part of said street, and obstructs said street and prevents the public from having access to said lake by means of said street, and prevents this plaintiff from the exercise of its right to control said street, and from the discharge of its duty to keep the same open, in repair, and free from nuisance.

Second Reply.

For a second reply to the second and third defences in the amended answer of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, plaintiff makes all that part of the foregoing first reply, beginning with the words and figures, "In the year 1796," and ending with the words "to the owners or the public," a part of this reply, and further says, that the said Cleveland Columbus & Cincinnati Railroad Company entered into the occupancy of

59 that part of Bath street described in the petition, under and by virtue of the said provisions in its charter, and by the permission of the said city of Cleveland, for the sole purpose of locating its tracks and line of railroad on and across the same, subject at all times to the said obligation of said company to restore said street to its former state of usefulness, and not to impair its convenience, usefulness or value to the public, and subject also at all times to the paramount right of this plaintiff to the possession and control of all of said street for street purposes, and subject to the exercise of the right and duty of plaintiff to improve said street, when in its judgment necessary, and to keep the same open, in repair, and free from nuisance.

Third Reply.

For a third reply to the second and third defenses in said amended answer of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, plaintiff, denies each and every allegation therein contained.

Fourth Reply.

For a fourth reply to the third defense in said amended answer of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, plaintiff says, that during the time that said defendant, or said defendant and those under whom it claims, have possessed, occupied and used the part of Bath street described in the petition, or any part thereof, such possession, occupancy and use have at no time, and in no way, been adverse to the said city.

Fifth Reply.

For a reply to the fourth defense in said amended answer, plaintiff admits that the city of Cleveland was incorporated by act of the legislature in 1836; that this defendant company was incorporated and organized as by it alleged; that this defendant company was formed by the consolidation of other companies as alleged; that the other defendant companies are incorporated as alleged; that the defendants are in possession of the lands described in the petition; that plaintiff leased some parts of the land described in the petition to various parties for terms of years, and such portions were for a time occupied by the lessees; that the Cleveland, Columbus & Cincinnati Railroad Company, the Cleveland & Pittsburgh Railroad Company, and the Cleveland, Painesville & Ashtabula Railroad Company were incorporated to build lines of railroad as alleged; that on or about the 13th of September, 1849, the plaintiff and the

60 Cleveland, Columbus & Cincinnati Railroad Company entered into a contract with reference to the occupancy of a part of said Bath street; that the \$15,000.00 mentioned in said contract was paid to the city, and that it has never been returned and no offer to return the same has been made; that this defendant company "by virtue of said contract" entered into the possession of the portion of Bath street described in said contract; that different railroad companies constructed a union station near the lands described in the petition; that this defendant company has expended money in the laying of tracks and in construction of buildings on the lands described in the petition; that in the year 1868 the plaintiff entered into a contract with the Lake Shore & Michigan Southern Railway Company and the Cleveland, Columbus, Cincinnati & Indianapolis Railroad Company in regard to a portion of said Bath street, and that in January, 1879, plaintiff entered into an agreement with the Cleveland, Columbus, Cincinnati & Indianapolis Railroad Company with reference to a portion of said Bath street, but the terms of said contract as alleged by defendant are not admitted.

And this defendant denies all else that is alleged in said fourth defense.

MINER G. NORTON,
Corporation Counsel;
JAMES LAWRENCE,
GEORGE L. PHILLIPS,
Special Counsel,
Attorneys for Plaintiff.

(Duly verified.)

Court of Common Pleas.

Reply to Second Amended Answer of the Lake Shore and Michigan Southern Railway Company.

(Filed Dec. 4, 1897.)

First Reply.

For a first reply to the second, third and fourth defenses in the second amended answer of the Lake Shore & Michigan Southern Railway Company, plaintiff says: In the year 1796, the land described in the petition was part of a large body of land, contiguous thereto on all sides, bounded on the northerly side thereof by Lake Erie, and owned in fee by the Connecticut Land Company. By a survey and plat, duly made in said year, and by a resurvey and a second plat, duly made in the year 1801, and duly recorded, 61 the said Connecticut Land Company caused the village of Cleveland (now a part of the city of Cleveland, plaintiff herein), to be laid out and established. Among the streets thereby laid out, dedicated and established, is what was then designated and known as Bath street (now called Front street), extending from the Cuyahoga river on the west, to the westerly line of Water street on the east, and from the northerly line of lot 191 of said village on the south, to Lake Erie on the north.

The said Lake Erie is situate between the United States and the Colonial possessions of Great Britain, and in said year 1796 was, and ever since has been, a great public highway, navigable for vessels of all burden, and has been navigated by both foreign and domestic vessels, during all the time aforesaid. Said lake, as such public highway, is very largely used for the carrying on of the trade and commerce of the country. The said city of Cleveland, situate on the southerly shore of said lake, is a large and growing city, whose people are extensively engaged in trade and commerce, and are in very large degree dependent, for the carrying on of their business and for the continued prosperity of their city, upon the trade and commerce carried on by means of said lake; and free and convenient landings, or connections between the highways of said city and the navigable waters of said lake, are indispensable to the full and free use of said lake, as a public highway, by the people of said City. Said Bath street, as laid out and dedicated as aforesaid, bordering its entire length on said lake, and being both a street and a landing, was intended to furnish, and until the wrongs of the defendants complained of in the petition, did furnish, free and convenient means of communication with the navigable waters of said lake, for the purposes aforesaid.

In addition to certain connecting tracks, constituting a continuous connection of said defendant's line of railway passing through said city, said defendant has constructed, and maintains, numerous buildings, tracks, switches, turnouts and other structures on said

part of said street; and in and by the construction and maintenance thereof, the said defendant excludes this plaintiff and the public from all of said part of said street, and obstructs said street and prevents travel thereon, and prevents the public from having access to said lake by means of said street, and prevents this plaintiff from the exercise of its right to control said street, and from the discharge of its duty to keep the same open, in repair, and free from nuisance.

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Second Reply.

For a second reply to the second defense in said amended answer of the Lake Shore and Michigan Southern Railway Company, plaintiff admits that, on or about the 13th day of September, 1849, F. W. Bingham, then mayor of said City of Cleveland, executed and delivered in the name of said City, the instrument in writing of that date, a copy of which is set forth in said second defense of said amended answer, that the consideration of \$15,000.00 in stock therein mentioned was received by said City, and that no offer has been made to return the said consideration.

Plaintiff further admits that subsequently thereto, the said Cleveland, Columbus & Cincinnati Railroad Company executed an agreement or instrument in writing of some kind with the Cleveland, Painesville & Ashtabula Railway Company and the Cleveland & Toledo Railroad Company, whereby it attempted to transfer, assign and convey to said last named companies some right in connection with said premises described in the petition, but the plaintiff is not advised as to the terms of said agreement or instrument in writing, or as to the nature or extent of the rights so attempted to be thereby transferred, assigned and conveyed.

Plaintiff further admits that the defendant, the Lake Shore & Michigan Southern Railroad Company is the successor of the Cleveland, Painesville & Ashtabula Railroad Company and the Cleveland & Toledo Railroad Company, by consolidation; that said defendant is the owner of a line of railroad from the city of Chicago to the city of Buffalo, which line of railroad passes on and over a portion of the land described in the petition, and that it has tracks upon said land which are a part of said continuous line of railroad; and that said defendant has erected certain structures and buildings, some upon said premises, and others near thereto; but the plaintiff does not know the cost and expense thereof, and does not admit the allegations in respect thereto contained in said second defense.

And plaintiff denies each and every allegation in said second defense in said second amended answer, not herein expressly admitted.

Third Reply.

For a second reply to the third and fourth defenses in said second amended answer, plaintiff denies each and every allegation therein contained.

Fourth Reply.

For a third reply to the third and fourth defenses in said second amended answer, plaintiff says that the Cleveland, Painesville & Ashtabula Railroad Company, and the Cleveland & Toledo Railroad Company (of which companies the Lake Shore & Michigan Southern Railroad Company is the successor), together with the Cleveland & Columbus Railroad Company and the Cleveland & Pittsburgh Railroad Company, entered into the occupation of said part of Bath street described in the petition by permission of plaintiff, for the purpose of the location of their tracks and lines of railroad on and across the same, subject at all times to the right of plaintiff to the possession and control of said street for street purposes and its discharge of its obligation to improve the same, when in its judgment necessary, and to keep the same open and in repair and free from nuisance; that such occupation of said Bath street as there has been by said the Lake Shore & Michigan Southern Company, and its said predecessors, has been only by the permission, and for the purpose aforesaid; and that until immediately prior to the commencement of this action, neither the said the Lake Shore & Michigan Southern Railroad Company, nor its said predecessors, ever claimed any title in the land embraced in said street, or denied the right of plaintiff therein.

Fifth Reply.

For a fourth reply to the fourth defense in said second amended answer, plaintiff says, that during the time that said defendant, or said defendant and those under whom it claims, have possessed, occupied and used the part of Bath street described in the petition, or any part thereof, such possession, occupancy and use have at no time and in no way, been adverse to the city.

Sixth Reply.

For a fifth reply to the fourth defense in said second amended answer, plaintiff says, that the right of action stated in the petition did accrue to the plaintiff within 21 years before the commencement of this action.

MINER G. NORTON,
Corporation Counsel;
JAMES LAWRENCE,
GEO. L. PHILLIPS,
Special Counsel,
Attorneys for Plaintiff.

(Duly verified.)

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Court of Common Pleas.

Amendment to the Separate Amended Answer of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

(Filed Feb. 1, 1909.)

Comes now the defendant, the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, and by leave of court first had and obtained, files this its amendment to its separate amended answer heretofore filed herein, and by way of further defense to the matters and things contained in the petition herein, says:

That at the time of the making of the contract of September 13, 1849, as in said amended answer set forth, there was in force in the State of Ohio an act of the legislature passed on the 11th day of February, 1848, entitled "An act regulating railroad companies," and among other things therein conferring power upon municipalities and railroad companies with reference to contracts pertaining to the occupancy of highways and public grounds, that portion of said act conferring such power being in words and figures as follows, to-wit:

"SEC. 11. If it shall be necessary in the location of any part of any railroad to occupy any road, street, alley or public way or ground of any kind, or any part thereof, it shall be competent for the municipal or other corporation or public officers, or public authorities, owning or having charge thereof, and the railroad company to agree upon the manner, and upon the terms and conditions upon which the same may be used or occupied; and if said parties shall be unable to agree thereon, and it shall be necessary in the judgment of the directors of such railroad company, to use or occupy such road, street, alley or other public way or ground, such company may apply to the court of common pleas of the county in which the same is situate, setting forth the aforesaid facts, and said court shall thereupon appoint at least three judicious disinterested freeholders of the county, who shall proceed to determine whether such occupation is necessary, and if necessary, the manner and terms upon which the same shall be used, and make return of their doings in the premises to said court, who shall, if they deem the same just and proper, make the necessary order to carry the
65 same into effect, or they may order a review of the same, as such court may consider justice and the public interest require."

That the charter of the Cleveland, Columbus & Cincinnati Railroad Company, of which this defendant is the successor, also conferred upon it the right and power to appropriate for its uses and purposes highways and public grounds.

That at the time said contract was so made under authority of such charter and said acts of the legislature, railroad building in the State of Ohio was in its infancy, and in the making of said contract and in the making of various other contracts between rail-

road companies and municipalities at and shortly subsequent to said period, said charter provision of the railroad company and charters of other railroad companies containing like provisions, and said acts of the legislature were practically construed by the municipalities throughout the State of Ohio and by the different railroad companies as conferring the right and power upon a municipality to make just such a contract as said contract of September 13, 1849, and to thereby grant to railroad companies the right to the exclusive and permanent use of portions of highways and public grounds.

That in reliance upon such practical construction of said charter provisions and said acts of the legislature, and upon the language of said charters and acts themselves, this defendant entered into the contract of September 13, 1849, and into the possession of the premises therein described, and proceeded to make large and valuable improvements thereon, and that it has continued in said possession and has admitted the other defendant railroad companies into the occupancy and possession of a portion of said property, and it and said other defendant companies have continued in the expenditure of large sums of money in the laying of tracks and the building of structures thereon, and in the making of permanent improvements, all of which is more fully set forth in the fourth defense of the separate amended answer of this defendant.

That until about the year 1877 there was no interpretation or construction of the said charter provisions and of said acts of the legislature by the Supreme Court of the State of Ohio, but that in the year 1877 the Supreme Court of Ohio, being the court of last resort in said state, did construe and interpret the railroad act of 1852, which is in terms substantially a copy of said railroad act of 1848 herein referred to, and then held and determined that under said act it was competent and lawful for railroad companies 66 and municipalities to agree by binding contract for the permanent and exclusive use and occupation by railroad companies and for railroad purposes of public highways and public grounds in the State of Ohio; and that subsequently, in the year 1881, the Supreme Court of Ohio, further construing said act, held that contracts made between municipalities and railroad companies granting to such companies permanent and exclusive rights for railroad purposes in public highways and public grounds, were valid contracts which could not thereafter be repudiated or impaired by the municipalities, parties to such contracts.

That subsequent to the year 1877, and when said railroad act had been so construed and interpreted by the Supreme Court of the State of Ohio, this defendant in reliance upon said contract and the construction so made, proceeded with the further improvements of the premises referred to in said contract, expending thereon various large sums of money as in its fourth defense in its separate amended answer set forth.

That the city of Cleveland in this action contends that said contract of 1849 is invalid for want of power on the part of the city of Cleveland under the railroad act of 1848 or any other statute or law of the State of Ohio, to enter into such contract and to grant

the rights therein granted to this defendant; and that said city of Cleveland is seeking herein to support said claim by virtue of sundry decisions of the Supreme Court of Ohio made subsequent to the year 1881 construing and interpreting the railroad act of Ohio with respect to the binding obligations of contracts between municipalities and railroad companies with relation to the occupancy for railroad purposes of highways and public grounds and contending that under such interpretation and construction as has been so placed upon the statute pertaining thereto since the 5th day of February, 1895, the said contract of September 13, 1849 is invalid.

This defendant says that said contract of September 13, 1849, was authorized by the express language of said railroad act of 1848; that by common consent of municipalities and railroad companies throughout the State of Ohio, said act was practically construed as giving full power and authority to make such a contract; that as hereinbefore set forth, the court of last resort in the State of Ohio as early as 1877 construed said act as giving such right and power and as sustaining the validity of said contract of September 13, 1849.

That upon the strength of such practical construction
67 and such judicial construction, this defendant and the other defendants herein have expended the large sums of money as hereinbefore set forth.

That if it be true, as contended by the City of Cleveland, that subsequent decisions of the courts of the State of Ohio have changed the construction of said statute, such rulings and decisions cannot be given retroactive effect so as to render invalid said contract of September 13, 1849; and defendant says that to give them the effect herein contended for by the City of Cleveland, would be to impair the contract right of this defendant, in violation of the constitution of the United States and particularly the 10th section of article I thereof.

By way of further amendment to its separate amended answer, defendant further says:

That this defendant has no legal estate in or right to the possession of that part of the land described in plaintiff's petition, which lies southerly of a line drawn parallel with the southerly line of Front street, formerly Bath street, in the city of Cleveland, and one hundred and thirty-two (132) feet northerly, or northwesterly at right angles from the southerly line of Front street, formerly Bath street; nor is it in possession thereof except that this defendant claims the right to maintain and use its railroad tracks now laid in, across and upon said street.

And this defendant further says that it has no legal estate in, or right to the possession of either of the following described pieces or parcels of land, which are included in the description in plaintiff's petition contained, to-wit:

First Parcel. A piece or parcel bounded southerly by said line drawn parallel with the southerly line of Bath (now Front) street, and one hundred and thirty-two (132) feet northerly or northwesterly at right angles from said southerly line of Bath (now

Front) street; easterly by a line drawn parallel with the westerly face of the stone (United States government) pier, so-called, upon the easterly side of the Cuyahoga river, and one hundred (100) feet easterly therefrom; northerly by a line drawn parallel with the southerly line of Bath (now Front) street and two hundred and eighty-two (282) feet northerly therefrom; and westerly by the west face of said stone (United States government) pier, on the easterly side of the Cuyahoga river.

Second Parcel. A strip of land twenty-five (25) feet in width bounded westerly by the west face of said stone (United States government) pier, on the easterly side of the Cuyahoga river; easterly by a line drawn parallel therewith and twenty-five feet therefrom, and extending from the northerly line of the above described parcel of land designated as "First Parcel," along said pier to the northerly end thereof as it is now or may be hereafter extended, nor is this defendant in possession of said parcels or either of them or any part thereof.

And this defendant hereby disclaims all legal estate in and right to the possession of all of said land described in plaintiff's petition, lying southerly of said line drawn one hundred and thirty-two (132) feet northerly or northwesterly, at right angles from the southerly line of Bath (now Front) street, except the right to maintain and use its railroad tracks now laid in, upon and across said portion of ground.

And this defendant also disclaims all legal estate in and the right to the possession of each of said two parcels of land hereinbefore described, and called "First Parcel" and "Second Parcel."

And this defendant makes this amendment and disclaimer to apply to all of the paragraphs, or defenses, of its answer.

COOK, MCGOWAN & FOOTE,

*Attorneys for Defendant, The Cleveland,
Cincinnati, Chicago & St. Louis Ry. Co.*

(Duly verified.)

Court of Common Pleas.

*Amendment to the Second Separate Amended Answer of the Lake
Shore & Michigan Southern Railway Company.*

(Filed Feb. 1, 1909.)

Comes now the defendant, the Lake Shore & Michigan Southern Railway Company, and by leave of court first had and obtained, files this its amendment to its second separate amended answer heretofore filed herein, and by way of further defense to the matters and things contained in the petition herein, says:

That at the time of the making of the contract of September 13, 1849, as in said amended answer set forth, there was in force in the state of Ohio an act of the legislature passed on the 11th day of February, 1848, entitled "An act regulating railroad companies,"

and among other things therein conferring power upon municipalities and railroad companies with reference to contracts pertaining to the occupancy of highways and public grounds, that portion of said act conferring such power being in words and figures as follows, to-wit:

"SEC. 11. If it shall be necessary in the location of any part of any railroad to occupy any road, street, alley, or public way or ground of any kind, or any part thereof, it shall be competent for the municipal or other corporation or public officers, or public authorities, owning or having charge thereof, and the railroad company to agree upon the manner, and upon the terms and conditions upon which the same may be used or occupied; and if said parties shall be unable to agree thereon, and it shall be necessary in the judgment of the directors of such railroad company, to use or occupy such road, street, alley or other public way or ground, such company may apply to the court of common pleas of the county in which the same is situate, setting forth the aforesaid facts, and said court shall thereupon appoint at least three judicious disinterested freeholders of the county, who shall proceed to determine whether such occupation is necessary, and if necessary, the manner and terms upon which the same shall be used, and make return of their doings in the premises to said court, who shall, if they deem the same just and proper, make the necessary order to carry the same into effect, or they may order a review of the same, as such court may consider justice and the public interest require."

That said act also contained the provisions in the words and figures following, to-wit:

"SEC. 2. Said corporation shall be authorized to construct and maintain a railroad, with a single or double track, with such side tracks, turnouts, offices and depots as they may deem necessary, between the points named in the special act incorporating the same, commencing at or within, and extending to or into any town, city or village named as the place of beginning, or terminus of such road, and construct branches from the main line to other towns or places within the limits of any county through which said road may pass."

"SEC. 9. Such corporation is authorized to enter upon any land for the purpose of examining and surveying its railroad line, and may appropriate so much thereof as may be deemed necessary for its railroad, including necessary side tracks, depots, workshops and water stations," etc.

That the Cleveland, Painesville & Ashtabula Railroad Company of which this answering defendant, the Lake Shore & Michigan Southern Railway Company, is the successor, was incorporated by special act of the legislature of the State of Ohio passed on the 18th day of February, 1848, and by the terms of said act said company had all the powers and was subject to all the restrictions and provisions of said act of February 11, 1848.

That at the time said contract was so made under authority of said acts of the legislature, railroad building in the State of Ohio was in its infancy, and in the making of said contract and in the

making of various other contracts between railroad companies and municipalities at and shortly subsequent to said period, said charter provision of the railroad company and charters of other railroad companies containing like provisions, and said acts of the legislature were practically construed by the municipalities throughout the State of Ohio and by the different railroad companies as conferring the right and power upon a municipality to make just such a contract as said contract of September 13, 1849, and to thereby grant to railroad companies the right to the exclusive and permanent use of portions of highways and public grounds.

That in reliance upon such practical construction of said charter provisions and said acts of the legislature, and upon the language of said charters and acts themselves, this defendant entered into the contract of September 13, 1849, and into the possession of the premises therein described, and proceeded to make large and valuable improvements thereon, and that it has continued in said possession and has admitted the other defendant railroad companies into the occupancy and possession of a portion of said property, and it and said other defendant companies have continued in the expenditure of large sums of money in the laying of tracks and the building of structures thereon, and in the making of permanent improvements, all of which is more fully set forth in the second defense of the second separate amended answer of this defendant.

That until about the year 1877 there was no interpretation or construction of the said charter provisions and of said acts of the legislature by the Supreme Court of the State of Ohio, but that in the year 1877 the Supreme Court of Ohio, being the court of last resort in said state, did construe and interpret the Railroad Act of 1852, which is in terms substantially a copy of said Railroad Act of 1848 herein referred to, and then held and determined that under said Act it was competent and lawful for railroad companies and municipalities to agree by binding contract for the permanent and exclusive use and occupation by railroad companies

71 and for railroad purposes of public highways and public grounds in the State of Ohio; and that subsequently, in the year 1881, the Supreme Court of Ohio, further construing said act, held that contracts made between municipalities and railroad companies granting to such companies permanent and exclusive rights for railroad purposes in public highways and public grounds, were valid contracts which could not thereafter be repudiated or impaired by the municipalities, parties to such contracts.

That subsequent to the year 1877, and when said Railroad Act had been so construed and interpreted by the Supreme Court of the State of Ohio, this defendant, in reliance upon said contract and the construction so made, proceeded with the further improvements of the premises referred to in said contract, expending thereon various large sums of money as in its second defense in its second separate amended answer set forth.

That the City of Cleveland, in this action, contends that said contract of 1849 is invalid for want of power on the part of the City of Cleveland under the Railroad Act of 1848 or any other statute

or law of the State of Ohio, to enter into such contract and to grant the rights therein granted to this defendant; and that said City of Cleveland is seeking herein to support said claim by virtue of sundry decisions of the Supreme Court of Ohio made subsequent to the year 1881 construing and interpreting the Railroad Act of Ohio with respect to the binding obligations of contracts between municipalities and railroad companies with relation to the occupancy for railroad purposes of highways and public grounds, and contending that under such interpretation and construction as has been so placed upon the statute pertaining thereto since the fifth day of February, 1895, the said contract of September 13, 1849, is invalid.

This defendant says that said contract of September 13, 1849, was authorized by the express language of said Railroad Act of 1848; that by common consent of municipalities and railroad companies throughout the State of Ohio, said act was practically construed as giving full power and authority to make such a contract; that as hereinbefore set forth, the court of last resort in the State of Ohio as early as 1877 construed said act as giving such right and power and as sustaining the validity of said contract of September 13, 1849.

That upon the strength of such practical construction and such judicial construction, this defendant and the other defendants herein have expended the large sums of money as hereinbefore set forth.

72 That if it be true, as contended by the City of Cleveland, that subsequent decisions of the Courts of the State of Ohio have changed the construction of said statute, such rulings and decisions cannot be given retroactive effect so as to render invalid said contract of September 13, 1849; and defendant says that to give them the effect herein contended for by the City of Cleveland, would be to impair the contract right of this defendant, in violation of the Constitution of the United States, and particularly the tenth Section of Article I thereof.

By way of further amendment to its second separate amended answer, defendant says:

That it is not in possession of and does not claim to have any legal estate in or right to the possession of that part of the land described in plaintiff's petition which lies southerly of a line drawn parallel with the southerly line of Bath (now Front) street in the city of Cleveland, and one hundred and thirty-two (132) feet northerly or northwesterly at right angles from said southerly line of Bath (now Front) street. Nor does this defendant claim any legal estate in or right to the possession of either of the following described pieces or parcels of land which are included within the description in plaintiff's petition contained, except the right to maintain and operate the railroad tracks now constructed and in use across the land hereinafter designated "First Parcel."

First Parcel. A piece or parcel bounded southerly by said line drawn parallel with the southerly line of Bath (now Front) street, and one hundred and thirty-two (132) feet northerly or northwesterly at right angles from said southerly line of Bath (now Front) street; easterly by a line drawn parallel with the westerly face of the

Stone (United States Government) Pier, so called, upon the easterly side of the Cuyahoga River, and one hundred (100) feet easterly therefrom; northerly by a line drawn parallel with the southerly line of Bath (now Front) street, and two hundred and eighty-two (282) feet northerly therefrom; and westerly by the west face of said Stone (United States Government) pier, on the easterly side of the Cuyahoga river.

Second Parcel. A strip of land twenty-five (25) feet in width, bounded westerly by the west face of said Stone (United States Government) Pier, on the easterly side of the Cuyahoga River; easterly by a line drawn parallel therewith and twenty-five feet therefrom, and extending from the northerly line of the above described parcel of land designated as "First Parcel" along said pier to the northerly end thereof, as it is now or may be hereafter extended.

And this defendant disclaims hereby all legal estate in, and right to the possession of, all of said land described in plaintiff's petition lying southerly of said line drawn one hundred and thirty-two (132) feet northerly or northwesterly at right angles from the southerly line of Bath (now Front) street; and also disclaims all legal estate in, and right to the possession of, each of two said parcels of land hereinbefore described and designated as "First Parcel" and "Second Parcel," except the right to maintain and operate tracks as aforesaid.

And this defendant avers and says that in each instance where different statements were made in contradiction of the facts herein stated in said second amended answer, that the same were inserted by mistake, and this defendant now withdraws the same therefrom, and desires the statements in this amendment contained as to the possession, title and right of possession as to the lands described in plaintiff's petition, to control and stand for and instead of all allegations inconsistent therewith contained in said second amended answer.

Wherefore this plaintiff prays judgment as in said second amended answer.

COOK, McGOWAN & FOOTE,

*Attorneys for Defendant, The Lake Shore &
Michigan Southern Railway Company.*

(Duly verified.)

Court of Common Pleas.

*Reply to Amendment to the Separate Amended Answer of the
Cleveland, Cincinnati, Chicago and St. Louis Railway Com-
pany.*

(Filed February 4, 1909.)

The City of Cleveland admits that the General Assembly of the State of Ohio, on the 11th day of February, 1848, passed an act entitled "An act regulating railroad companies," and that Section 11 of said act is as set forth in the amendment to the separate amended

answer of the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, defendant herein.

The city accepts the disclaimer of the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, and each and every other statement, averment and allegation in the said amendment to the separate amended answer this plaintiff denies, except as hereinbefore admitted to be true, and except that the City of Cleveland contends that the contract of September 13, 1849, is not valid to the extent and for the purposes claimed by this defendant, and in regard to said contract the plaintiff reaffirms the statements

74 and allegations contained in its reply heretofore filed to the separate amended answer of The Cleveland, Cincinnati, Chicago and St. Louis Railway Company.

NEWTON D. BAKER.

(Duly verified.)

Court of Common Pleas.

Reply to Amendment to the Separate Amended Answer of the Lake Shore and Michigan Southern Railway Company.

(Filed February 4, 1909.)

The City of Cleveland admits that the General Assembly of the State of Ohio, on the 11th day of February, 1848, passed an act entitled "An Act regulating railroad companies," and that Section 11 of said act is as set forth in the amendment to the separate amended answer of The Lake Shore and Michigan Southern Railway Company, filed herein.

The City accepts the disclaimer of The Lake Shore and Michigan Southern Railway Company, and each and every other statement, averment and allegation in the said amendment to the separate amended answer this plaintiff denies, except as hereinbefore admitted to be true, and except that the City of Cleveland contends that the contract of September 13, 1849, is not valid to the extent and for the purposes claimed by this defendant, and in regard to said contract the plaintiff reaffirms the statements and allegations contained in its reply heretofore filed to the separate amended answer of The Lake Shore and Michigan Southern Railway Company.

NEWTON D. BAKER,

Attorney for the City of Cleveland.

(Duly verified.)

Court of Common Pleas.

Disclaimer.

(Filed February 9, 1909.)

The defendants, the Cleveland & Pittsburgh Railroad Company and the Pennsylvania Company, disclaim to have any legal estate

in or right to the possession of that part of the land described in plaintiff's petition which lies southerly of a line drawn parallel with the southerly line of Bath (now Front) street in the city of Cleveland, and one hundred and thirty-two (132) feet northerly or northwesterly at right angles from said southerly line of
75 Bath (now Front) street. Nor do these defendants claim any legal estate in or right to the possession of either of the following described pieces or parcels of land which are included within the description contained in plaintiff's petition, to-wit:

First Parcel. A piece or parcel bounded southerly by said line drawn parallel with the southerly line of Bath (now Front) street, and one hundred and thirty-two feet northerly or northwesterly at right angles from said southerly line of Bath (now Front) street; easterly by a line drawn parallel with the westerly face of the Stone (United States Government) Pier, so-called, upon the easterly side of the Cuyahoga river, and one hundred (100) feet easterly therefrom; northerly by a line drawn parallel with the southerly line of Bath (now Front) street and two hundred and eighty-two (282) feet northerly therefrom; and westerly by the west face of said Stone (United States Government) Pier, on the easterly side of the Cuyahoga river.

Second Parcel. A strip of land twenty-five (25) feet in width, bounded westerly by the west face of said Stone (United States Government) Pier, on the easterly side of the Cuyahoga river; easterly by a line drawn parallel therewith and twenty-five (25) feet therefrom, and extending from the northerly line of the above described parcel of land designated as "First Parcel" along said pier to the northerly end thereof, as it now or may be hereafter extended.

And said defendants disclaim hereby all legal estate in and right to the possession of all of said land described in plaintiff's petition lying southerly of said line drawn one hundred and thirty-two (132) feet northerly or northwesterly at right angles from the southerly line of Bath (now Front) street; and also disclaim all legal estate in, and right to the possession of each of said two parcels of land hereinbefore described and designated "First Parcel" and "Second Parcel."

SQUIRE, SANDERS & DEMPSEY,

*Attorneys for The Cleveland & Pittsburgh Railroad
Company and the Pennsylvania Company.*

(Duly verified.)

Court of Common Pleas.

*Motion for New Trial by The Cleveland, Cincinnati, Chicago &
St. Louis Railway Company.*

(Filed February 19, 1909.)

Now comes the defendant, The Cleveland, Cincinnati, Chicago
76 & St. Louis Railway Company, and moves the court for an order vacating the decision, verdict and judgment in the above entitled cause and granting a new trial to this defend-

ant for the following causes affecting materially the substantial rights of this defendant.

First. Because the verdict, decision and judgment is not sustained by sufficient evidence.

Second. Because the verdict, decision and judgment is contrary to law.

Third. For error of law occurring at the trial and excepted to by the defendant.

COOK, MCGOWAN & FOOTE,

Attorneys for Defendant, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

Court of Common Pleas.

Statement of the Cleveland and Pittsburgh Railroad Company and the Pennsylvania Company as to the Federal Question Raised in said Action.

(Filed February 10, 1909.)

The defendants, The Cleveland and Pittsburgh Railroad Company and the Pennsylvania Company, separately claim in this action that the contract entered into between the City of Cleveland and the Cleveland, Columbus & Cincinnati Railway Company, dated September 13, 1849, and appearing in the pleadings herein, was a legal, valid instrument, by which the City of Cleveland effectually parted with the right of possession of the property in dispute in this action, and said contract constitutes a defense for each of these defendants.

These defendants also separately claim and contend that said instrument of September 13, 1849, was authorized by the statutes of Ohio then in force, as such statutes were practically and generally construed and as they might be reasonably interpreted, and that thereafter, in a series of decisions beginning about the year 1877, the Supreme Court of the State of Ohio placed a construction upon said statutes which fully authorized the transaction evidenced by said contract of September 13, 1849; that these defendants, up to the time of such judicial construction by the Supreme Court, relied upon the language of said statutes and the practical construction given them, and proceeded to expend large sums of money in and upon the property in dispute, upon the assumption that the City of Cleveland had parted with its interest in said property through and by virtue of said contract of September 13, 1849, and the construction of the Supreme Court in such cases holding that the statutes in force authorized the transaction as made.

77 These defendants and each of them claim and contend that, to give the effect contended for by the plaintiff to the rulings of the Supreme Court of Ohio, in the following cases, namely:

Railway Company vs. Defiance, 52 Ohio St., 262,
Railway Company vs. Elyria, 69 Ohio St., 414,
Railway Company vs. City, 76 Ohio St., 481,

that such cases hold and decide that the contract of 1849 before referred to was not authorized by the statutes of Ohio then in force, would be to give a retroactive effect to such rulings and to impair contract rights, because thereby the court would now be declaring the contract of 1849 invalid, whereas at the time it was made the statutes in force authorized such contracts, and that to now hold invalid such contracts by the holdings above referred to would be an impairment of the contract rights of the parties to said contract, in contravention and violation of the Constitution of the United States. Therefore, these defendants and each of them claim the protection of the provisions of the Constitution of the United States in this respect, and ask the court to make, as a part of the record herein, this claim of these defendants and each of them to the protection of the Constitution of the United States against the impairment of contract rights.

SQUIRE, SANDERS & DEMPSEY,
Attorneys for the Above-named Defendants.

Allowed and made a part of the record as of the 10th day of February, 1909.

WILLIS VICKERY,
Judge of the Court of Common Pleas.

Court of Common Pleas. *

Motion for New Trial by the Lake Shore & Michigan Southern Railway Company.

(Filed February 19, 1909.)

Now comes the defendant, The Lake Shore & Michigan Southern Railway Company, and moves the court for an order vacating the decision, verdict and judgment in the above entitled cause and granting a new trial to this defendant for the following causes affecting materially the substantial rights of this defendant.

First. Because the verdict, decision and judgment is not sustained by sufficient evidence.

Second. Because the verdict, decision and judgment is contrary to law.

78 Third. For error of law occurring at the trial and excepted to by the defendant.

COOK, MCGOWAN & FOOTE,
Attorneys for Defendant, The Lake Shore & Michigan Southern Railway Company.

Court of Common Pleas.

Motion of the Cleveland and Pittsburgh Railroad Company and Pennsylvania Company for a New Trial.

(Filed February 20, 1909.)

Now come the defendants, The Cleveland and Pittsburgh Railroad Company and the Pennsylvania Company, and move the court for a new trial herein, upon the following grounds:

1. That the court erred in sustaining the motion filed by the plaintiff to vacate the judgment and order heretofore entered in this cause on the 21st day of December, 1899, reading as follows:

"DECEMBER 21, 1899.

"Dismissed for want of prosecution at plaintiff's costs and judgment rendered."

2. That the court erred in proceeding with the trial of said action for the reason that it had no jurisdiction of the defendants or the subject-matter.

3. That the court erred in the admission of evidence offered by the plaintiff on the trial of said cause, over the objection of the defendants, to which rulings these defendants at the time excepted.

4. That the court erred in the exclusion of evidence offered by the defendants on the trial of said cause, to which rulings these defendants at the time excepted.

5. That the finding of the court is contrary to the law and the evidence.

6. That the finding of said court is not sustained by sufficient evidence.

7. That the finding of said court should have been for the defendants instead of for the plaintiff.

8. For other errors apparent upon the face of the record.

SQUIRE, SANDERS & DEMPSEY,
Attorneys for the Above-named Defendants.

Court of Common Pleas.

Motion.

(Filed February 3, 1909.)

79 The plaintiff moves the court to vacate the judgment and order heretofore entered in this cause on the 21st day of December, 1899, reading as follows: "December 21, 1899, dismissed for want of prosecution at plaintiff's costs. Judgment rendered," and as grounds for this motion in this behalf, the plaintiff says that on the 10th day of January, 1898, a certified copy of

an order from the Circuit Court of the United States for the Eastern Division of the Northern District of Ohio was filed in the office of the clerk of this court, removing this cause to the said Circuit Court of the United States for further proceedings; and that said order was on file on the 21st day of December, 1899; that thereafter this cause continued in said Circuit Court of the United States and in the Circuit Court of Appeals of the United States until the 20th day of July, 1906, upon which day a certified copy of the journal entry of the Circuit Court of Appeals for the Sixth District was filed with the clerk of this court, remanding this cause to this court for further proceedings; and the plaintiff says that the entry of the 21st day of December, 1899, was not made or directed to be made by any judge of this court, but was made by mistake of the clerk, and that the judgment thus entered by said clerk was irregularly obtained in this, to-wit: that at the time of the entry of said judgment by such mistake of the clerk of this court, as aforesaid, this cause was pending in the United States Circuit Court under and by virtue of the removal of said cause to said court, and was not pending in this court, nor had this court any jurisdiction to make any order or judgment therein.

JAMES LAWRENCE,
E. D. MORGAN,
NEWTON D. BAKER,
Attorneys for City of Cleveland.

Court of Common Pleas.

Docket and Journal Entries.

To Recover Real Estate.

April Term, 1893. Begun and held April 4th.

August 17, 1893. Petition and precipe filed and summons issued.

August 26, 1893. Summons returned endorsed: On the 23rd day of August, 1893, I served this writ on the within named the Cleveland, Cincinnati, Chicago and St. Louis Railway Co. On E. W. Brink, chief clerk of said corporation, by delivering him a true and certified copy thereof, the president or other chief officer of said corporation not found in my county. Also, on the 23rd day of August, 1893, on The Lake Shore and Michigan Southern Railway Company; on C. P. Leelan, auditor of said corporation, by delivering to him a true and certified copy thereof, the president or other chief officer of said corporation not found in my county. Also on the 23rd day of August, 1893, on the Cleveland and Pittsburgh Railroad Company; on G. A. Ingersoll, treasurer of said corporation, by delivering to him a true and certified copy thereof. The president or other chief officer of said corporation not found in my county. Also on the 23rd day of August, 1893, on the Pennsylvania Company, on L. F. Loree, superintendent of said corporation, by delivering to him a true and certified copy thereof.

The president or other chief officer of said corporation not found in my county. Ryan. Sheriff fees \$2.67.

Continued September Term, 1893.

September 26, 1893. To Court: The defendants have leave to plead by October 21st, 18-3. Jour. 116-4.

October 5, 1893. Answer of the L. S. & M. S. Ry. Co. filed.

October 14, 1893. Answer of the Cleveland and Pittsburgh Railroad Company and answer of Pennsylvania Company filed.

October 17, 1893. Answer and cross-petition of first-named defendant filed.

Continued January Term, 1894.

Notice for trial April Term, 1894, filed.

Continued April Term, 1894.

April 14, 1894. To Court: The defendant, The Lake Shore and Michigan Southern Railroad Company, has leave to file an amended answer instanter. Jour. 118-38.

April 14, 1894. Amended answer of The L. S. & M. S. Ry. Co. filed.

June 25, 1894. To Court: The plaintiff has leave to file a motion instanter. Jour. 118-374.

June 25, 1894. Motion by plaintiff to make first defense of answer of The Lake Shore & Michigan Southern Railway Company more definite and certain, and for said defendant to elect as to defense with brief filed and notice.

Notice for trial September Term, 1894, filed.

Continued September Term, 1894.

December 12, 1894. To Court: The motion by the plaintiff to require the defendant, The Lake Shore & Michigan Southern Railway Company to make the first defense of its amended answer more definite and certain, and to elect between defenses, and to make the second defense of said amended answer more definite and certain, is heard and the first request therein is granted, and said The Lake Shore and Michigan Southern Railway Company is required to specify in its second defense of amended answer, what portion of the premises in the petition described is occupied by it, or is in its possession, to which ruling and order said Lake Shore and Michigan Southern Railway Company excepts. The balance of said motion is overruled, to which overruling the plaintiff excepts. Judgment is rendered against said Lake Shore and Michigan Southern Railway Company for the costs of said motion. Jour. 119-394.

December 22, 1894. Amendment to amended answer filed.

Notice for trial January Term, 1895, filed.

January Term, 1895.

Notice for trial April Term, 1895, filed.

Continued April Term, 1895.

May 9, 1895. To Court: The cause is continued by consent of parties. Jour. 121-180.

Continued September Term, 1895.

Continued January Term, 1896.

Continued April Term, 1896.

Continued September Term, 1896.

Notice for trial January Term, 1897, filed.

Continued January Term, 1897.

March 9, 1897. To Court: This cause is continued by consent of Parties. Jour. 126-257.

Notice for trial April Term, 1897, filed.

April Term, 1897.

July Term, 1897.

Notice for trial September Term, 1897, filed.

September Term, 1897.

October 13, 1897. Notice of application for leave to file replies filed.

October 16, 1897. To Court: Plaintiff has leave to file replies to all answers by October 20th, 1897. Jour. 129-115.

October 30, 1897. Reply to answer of The C., C., C. & St. L. Ry. Co. Reply to answer of The L. S. & M. S. Ry. Co. Reply to answer of Pennsylvania Company, and reply to answer of The Cleveland & Pittsburgh Railroad Company filed.

October 30, 1897. To Court: The plaintiff has leave to file a reply instant. Jour. 129-188.

November 6, 1897. To Court: The defendant, The Lake Shore & Michigan Southern Railway Company has leave to file a second amended answer instant, without payment of costs. Jour. 129-233.

82 November 6, 1897. Second amended answer of the L. S. & M. S. Ry. Co. filed.

December 4, 1897. To Court: The plaintiff has leave to withdraw its reply to the amended answer of the Lake Shore and Michigan Southern Railway Company and file a reply to the second amended answer of said L. S. & M. S. Ry. Co. instant. Jour. 129-379.

December 4, 1897. Reply to second amended reply of the L. S. & M. S. Ry. Co. filed.

December 18, 1897. To Court: The defendant, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company has leave to file an amended answer by December 28th, 1897. Jour. 129-476.

December 27, 1897. Amended answer of the C., C., C. & St. L. Ry. Co. filed.

December 30, 1897. To Court: The defendants, The Cleveland, Cincinnati, Chicago & St. Louis Railroad Company and the Pennsylvania Company have leave to file amendments to their answers herein instant. Jour. 129-545.

December 31, 1897. Amendment to answer of The Cleveland & Pittsburgh Railroad Company and amendment to answer of the Pennsylvania Company filed.

Notice for trial January Term, 1898, filed.

January Term, 1898.

January 7, 1898. Replies to amended and amendment to answers filed.

January 10, 1898. Certified copy from U. S. Circuit Court filed.

April Term, 1898.

July Term, 1898.

September Term, 1898.

January Term, 1899.

April Term, 1899.

July Term, 1899.

September Term, 1899.

December 21, 1899. To Court: This cause is dismissed for want of prosecution at the plaintiff's costs, for which judgment is rendered against it. Jour. 137-418.

July Term, 1906.

July 20, 1906. On the 19th day of July, A. D. 1906, there was duly filed in this court a certain certificate of a Journal entry in the United States Circuit Court of Ohio, in this cause, which is as follows, to-wit:

THE UNITED STATES OF AMERICA,

Northern District of Ohio, Eastern Division, ss:

At a Stated term of the Circuit Court of the United States within and for the Eastern Division of the Northern District of Ohio, begun and held at the city of Cleveland, in said district, on the first Tuesday in April, being the third day of said month, in the year of Our Lord one thousand nine hundred and six, and of the independence of the United States of America, the one hundred and thirtieth, to-wit, the 19th day of July, A. D. 1906—Present: Honorable Robert W. Taylor, United States District Judge—Among the proceedings then and there had were the following, to-wit:

No. 5730. Law.

THE CITY OF CLEVELAND

vs.

THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY Company, The Lake Shore & Michigan Southern Railway Co., The Cleveland and Pittsburgh Railroad Company, and the Pennsylvania Company.

This cause having been removed from this court to the United States Circuit Court of Appeals for the Sixth Circuit, by a writ of error of the City of Cleveland, from a judgment entered in this cause, in this court, on the 13th day of March, A. D. 1905, and the said Circuit Court of Appeals having ordered and adjudged that the said judgment of this court, in this cause, is reversed and that said cause be remanded to this court with directions to remand it to the State Court, from which it was removed into this court, and that the costs incurred since the removal be paid by the party removing it, as appears by the mandate of said Circuit Court of Appeals now here: Now, on motion of Newton D. Baker, Esq., solicitor for the said City of Cleveland, it is ordered that the said judgment of the Circuit Court of Appeals be entered as the judgment of this court and this cause is remanded to the Court of Common Pleas of Cuyahoga county, from whence it was removed into this court at the costs of

the Pennsylvania Company, which party removed this cause into this court.

It is further ordered and adjudged that the other parties to this cause recover from the said Pennsylvania Company their costs herein expended since the removal of this cause, taxed at \$—, and that said Pennsylvania Company pay its own costs.

THE UNITED STATES OF AMERICA, *ss*:

I, Irvin Belford, Clerk of the Circuit Court of the United States, within and for the Northern District of the State of Ohio, do hereby certify that I have compared the within and foregoing transcript with the original Journal Entry, entered upon the Journal of the proceedings of said Court in the therein entitled cause, at the term, and on the day therein named; and do further certify that the same is a true, full and complete transcript and copy thereof.

Witness my official signature and the seal of said court, at Cleveland, in said district, this 19th day of July, A. D. 1906, and in the thirty-first year of the Independence of the United States of America.

IRVIN BELFORD, Clerk,
By E. C. MILLER, *Deputy Clerk*.

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Attest:

CHARLES P. SALEN, *Clerk*,
By ARTHUR J. GOUDY, *Deputy*.

[SEAL.]

Jour. 164-45.

September Term, 1907.

January Term, 1908.

April Term, 1908.

July Term, 1908.

September Term, 1908.

January Term, 1909.

February 1, 1909. To Court: Leave is given to the defendant. The Cleveland, Cincinnati, Chicago & St. Louis Railway Company to file an amendment to its separate amended answer instanter. Leave is also given to the defendant. The Lake Shore & Michigan Southern Railway Company, to file an amendment to its second separate answer instanter. Leave is also given to the defendant. The Cleveland & Pittsburg Railroad Company, to file an amendment to its separate answer and to the amendment to said separate answer instanter. Leave is also given to the defendant. The Pennsylvania Company, to file an amendment to its separate answer and to the amendment to said separate answer instanter. Jour. 174-185.

February 1, 1909. Amendment to separate answer and to amendment to said separate answer of the Pennsylvania Company filed.

February 1, 1909. Amendment to separate answer and to amendment to said separate answer of the Cleveland and Pittsburgh Railroad Company filed.

February 1, 1909. Amendment to the separate amended answer of C., C. & St. L. Railway Co. filed.

February 1, 1909. Amendment to the second separate amended answer of the L. S. & M. S. Ry. Co. filed.

February 3, 1909. Motion by plaintiff to vacate dismissal, with notice, filed.

February 3, 1909. To Court: Now comes the defendants, The Pennsylvania Company and the Cleveland & Pittsburgh Railroad Company, and by leave of court withdraw their amendments filed herein on the 1st day of February 1909. Jour. 174-200.

February 4, 1909. Reply by plaintiff to amendment to the separate amended answer of the C., C. & St. L. Ry. Co. filed.

February 4, 1909. Reply by plaintiff to amendment to the separate amended answer of the L. S. & M. S. Ry. Co. filed.

February 9, 1909. Disclaimer by defendant, The Cleveland & Pittsburgh Railroad Company, and the Pennsylvania Company, filed.

February 19, 1909. Motion by The Cleveland, Cincinnati, Chicago & St. Louis Ry. Co. and The Lake Shore and Michigan Southern Railway Company for a new trial filed.

February 20, 1909. Statement of The Cleveland and Pittsburgh Railroad Company and The Pennsylvania Company as to the Federal question raised in said action filed.

February 20, 1909. Motion of The Cleveland and Pittsburgh Railroad Company and Pennsylvania Company for a new trial filed.

February 23, 1909. To Court: This cause came on to be heard on the third day of February, A. D. 1909, upon the motion filed herein by the plaintiff to vacate the judgment and order heretofore entered herein in this cause on the 21st day of December, 1899, reading as follows: "December 21, 1899. This action is dismissed for want of prosecution at the plaintiff's costs, for which judgment is rendered against it;" the matter being argued by counsel, and the court thereupon maturely considered the same and finds that the said entry was made in this cause by mistake of the clerk of this court, and that the said judgment was irregularly obtained in that at the time said order was so entered by mistake as aforesaid, this cause had been removed to the Circuit Court of the United States, and was there pending, and this court was without jurisdiction to make any order or judgment therein. Whereupon, it is adjudged and decreed that the order heretofore entered in this cause, on the 21st day of December, 1899, reading as follows: "December 21, 1899. This action is dismissed for want of prosecution at the plaintiff's costs, for which judgment is rendered against it," be, and the same is hereby vacated and set aside, and that the record in this cause be, and the same is hereby corrected by the vacation of said order as aforesaid. To which action, order and judgment of the court each of the defendants except. Jour. 174-308.

May 8, 1909. Motion by The Cleveland and Pittsburgh Railroad Company and Pennsylvania Company for a new trial re-filed.

May 8, 1909. Motion by The Cleveland, Cincinnati, Chicago & St. Louis Railway Company for a new trial filed.

May 8, 1909. Motion by The Lake Shore and Michigan Southern Railway Co. for a new trial re-filed.

May 8, 1909. To Court: This cause coming on for hearing this day, and all parties hereto having waived a jury and submitted this cause to the court, the same was heard upon the pleadings and the evidence; and upon consideration thereof, the court finds that the plaintiff has a legal estate and is entitled to the immediate

86 possession of the premises described in the petition, subject to all the rights which the defendants herein, and each of them, have in and to said premises under and by virtue of a contract dated September, 1849, by and between the City of Cleveland and The Cleveland, Columbus, and Cincinnati Railroad Company, which said contract is recorded in Volume 51, pages 187, 188, 189 and 190 of the records of Cuyahoga county, Ohio, and being the same contract referred to in the pleadings of the parties herein, including such rights under and by virtue of said contract as any of said defendants have acquired by succession from or agreement with The Cleveland, Columbus and Cincinnati Railroad Company, its successors or assigns. And subject also to all such rights as defendants or any of them may have to lay, maintain and use tracks over and across the portions of said premises hereinafter designated as first, second and third parcels. And the court further finds that the defendants have unlawfully kept the plaintiff out of the possession of said premises, excepting the following described portions thereof, to-wit: First parcel. A piece or parcel bounded southerly by a line drawn parallel with the southerly line of Bath (now Front) street, and one hundred and thirty-two (132) feet northerly or northwesterly at right angles from said southerly line of Bath (now Front) street; easterly by a line drawn parallel with the westerly face of the stone (United States Government) pier, so called, upon the easterly side of the Cuyahoga river, and one hundred (100) feet easterly therefrom; northerly by a line drawn parallel with the southerly line of Bath (now Front) street and two hundred and eighty-two (282) feet northerly therefrom; and westerly by the west face of said stone (United States Government) pier, on the easterly side of the Cuyahoga river. Second parcel. A strip of land twenty-five (25) feet in width, bounded westerly by the west face of said stone (United States Government) pier, on the easterly by a line drawn parallel therewith and twenty-five (25) feet therefrom, and extending from the northerly line of the above described parcel of land designated as first parcel, along said pier to the northerly end thereof as it is now or may be hereafter extended. Third Parcel. All that part of said property described in the petition which lies southerly of a line drawn parallel with the southerly line of Front street, formerly Bath street, in the City of Cleveland, and one hundred and thirty-two (132) feet northerly or northwesterly at right angles from said southerly line of Front street. The motions for a new trial heretofore filed herein by the defendants and re-filed by

said defendants as of the date of this decree, are each of them
87 hereby overruled. To which overruling of said motions the defendants herein severally and separately except. It is therefore ordered, adjudged and decreed that plaintiff do recover from defendant possession of the premises described in the petition,

excepting therefrom the parcels designated as first parcel, second parcel and third parcel, hereinbefore described, but provided that such possession shall be subject to (all the rights which the defendants and each of them have) in said premises under and by virtue of said contract of September 13th, 1849. It is further ordered that plaintiff recover of the defendants its costs herein to be taxed, for which judgment is rendered against the defendants. Judgment is also rendered against the defendants for their costs herein to be taxed. And it is further ordered, adjudged and decreed that a writ of possession issue against the defendants and in favor of the plaintiff for the possession of said premises described in the petition, excepting the portions thereof hereinbefore described as first parcel, second parcel and third parcel, subject to the rights of the defendants therein, as above set forth. To each and all of the foregoing findings, orders and judgments each of the defendants severally and separately except. Jour. 175-208.

June 12, 1909. Bill of exceptions by defendants filed and notice issued.

June 17, 1909. Notice of the filing of bill of exceptions returned endorsed:

On the 15th day of June, 1909, I served this notice on the within named The City of Cleveland, by delivering a true and certified copy thereof to N. D. Baker, attorney of record for said city.

Sheriff Hirstius' fees \$0.70.

June 26, 1909. Bill of exceptions transmitted to trial Judge.

June 26, 1909. Bill of exceptions received from trial Judge.

July 7, 1909. Petition in error filed in Circuit Court by defendant, The Cleveland and Pittsburgh Railroad Company and the Pennsylvania Company.

(Duly certified.)

In the Court of Common Pleas.

Bill of Exceptions.

Be it remembered, that at the January term, 1909, of said court, to-wit, on February 1, 1909, this cause came on for hearing before Hon. Willis Vickery, one of the judges of said court, the parties having waived a jury.

88 The plaintiff the City of Cleveland moved the court to vacate the order and judgment of December 21, 1899, in this cause; which motion was granted by the court and said order and judgment vacated; to which ruling and action of the court the defendants then and there severally excepted.

Whereupon the defendants objected to proceeding with the case, on the ground that the court has no jurisdiction; which objection was overruled by the court; to which ruling of the court the defendants then and there severally excepted.

The following stipulation was entered into between the parties:

Stipulation.

It is hereby stipulated and agreed by and between the parties to the above entitled action, that upon the trial thereof any party may use and read in evidence any part or all of the printed record filed in the United States Circuit Court of Appeals for the Sixth Circuit in cause No. 1451 and entitled City of Cleveland, Plaintiff in Error, vs. The Cleveland, Cincinnati, Chicago & St. Louis Railway Company et al., Defendants in Error, with the same force and effect as if the witnesses whose testimony appears therein were called and duly sworn in person in this case, and as if the original maps and other papers, documents and evidence were produced and offered in evidence in this case.

This agreement is subject to the right of any party to object to any of the evidence so offered on the ground of immateriality or incompetency.

It is further understood that any party may offer such other and further evidence as such party may desire.

THE LAKE SHORE AND MICHIGAN
SOUTHERN RY. CO. AND

THE CLEVELAND, CINCINNATI, CHICAGO
AND ST. LOUIS RY. CO.,

By COOK, MCGOWAN & FOOTE,

Their Attorneys.

PENNSYLVANIA COMPANY.

By SQUIRE, SANDERS & DEMPSEY,

Attorneys.

THE CLEVELAND & PITTSBURG
RAILROAD COMPANY.

By SQUIRE, SANDERS & DEMPSEY,

Attorneys.

THE CITY OF CLEVELAND,

By NEWTON D. BAKER,

City Solicitor.

89 Mr. BAKER: Unless it is otherwise expressly stated, it will be understood that everything offered by the city on any point, contained in the printed record referred to in the stipulation, is again offered. We are offering by way of testimony in this trial everything that we offered in the other.

The plaintiff, the City of Cleveland, to maintain the issues on its part, offered in evidence the testimony of MAURICE MASCHKE, on page 2 of the printed record referred to in the stipulation, as follows:

By Mr. LAWRENCE:

Q. State your name?

A. Maurice Maschke.

Q. What is your business?

A. Deputy County Recorder.

Q. Of Cuyahoga County?

A. Yes, sir, Cuyahoga County, Ohio.

Q. Have you brought over the records called for in your subpoena, Mr. Maschke?

A. I have.

Q. In order to save time, I wish you would take first volume A of records there each one in turn, and state what those several books are?

A. (Indicating.) This record is volume A of deeds and mortgages of the records of Cuyahoga County.

By the COURT:

Q. What time does it cover?

A. This covers the period from July 14, 1810, that is the formation of Cuyahoga County, to May 31, 1815. (Indicating.) This is volume B of the records of deeds and mortgages of Cuyahoga County, covering a period from May 31, 1815, to April 23, 1818. The next volume is C of the records of deeds and mortgages, of Cuyahoga County, covering period from May 23, 1818, to August 7, 1820. This is volume D (indicating) of the records of deeds and mortgages of Cuyahoga County, covering a period from August 10, 1820, to December 3, 1823. (Indicating.) This is volume E of the records of deeds of Cuyahoga County. The period which this covers is not stated, but I think I can give it, though. It covers the period from December 3, 1823, to November 25, 1825. (Indicating.) This is volume 51 of the records of deeds of Cuyahoga County. Do you want the period which this covers?

Q. Yes, you might give it.

A. This covers a period from February 12, 1851, to September 1st, 1851. I have here volume 2 of the records of plats of Cuyahoga county. Do you want the period that covers?

Q. If you please, yes, sir.

A. This covers a period from May 30, 1854, to October 25, 1864.

Q. I will ask you as to this book, the record of plats No. 2, if there are not plats in there of an earlier date?

A. Of an earlier date?

Q. Yes?

Judge DYE: As far as the Three C's is concerned, we will admit that these books you have here are what he says they are, records from the county. You need not spend any time on that. We will probably object when they are introduced to the jury, but this is a preliminary matter we do not care about.

Mr. LAWRENCE: If it is conceded that these books may be treated as identified there is no use going into the testimony about it.

A. There may be plats dated before that time, but not received for record before that time, Mr. Lawrence. I have a certified copy here of a draft book of the Connecticut Western Reserve. This is a transcript from the records of Trumbull County, where the original is recorded. That is all.

Q. I will ask you in respect to all those books, please tell us where you got them when you brought them over here?

A. I brought them from the recorder's office in the Court House.

Q. Of what county?

A. Cuyahoga County.

No cross examination.

And further to maintain the issues on its part, the plaintiff offered in evidence deed from The State of Connecticut to Caleb Atwater, recorded in Draft Book of Western Reserve, page 5, and a true copy of same is as follows, to-wit:

"To all the people to whom these presents shall come, Greeting:

Whereas, The General Assembly of the State of Connecticut, at their sessions holden at Hartford, in said State, on the second Thursday of May, Anno Domini, One Thousand Seven Hundred and Ninety-five, passed a resolve in the words following, viz:

"Resolved By This Assembly, That a Committee be appointed to receive any proposals that may be made by any person or persons, whether inhabitants of the United States, or others, for the purchase of the lands belonging to this State lying west of the west line of Pennsylvania, as claimed by said State; and the said committee are hereby fully authorized and empowered, in the name and behalf of this State, to negotiate with any such person or persons, on the subject of any such proposals, and also, to form and complete any contract or contracts for the sale of said lands, and to make and execute, under their hands and seals, to the purchaser or purchasers, a deed or deeds, duly authenticated, quitting, in behalf of this State, all right, title and interest, judicial and territorial, in and to the said lands, to him or them, and to his or their heirs forever.

"That, before the executing of such deed or deeds, the purchaser or purchasers shall give their personal note or bond, payable to the treasurer of this State for the purchase money, carrying an interest of six per centum per annum, payable annually, to commence from the date thereof, or from such future period, not exceeding two years from the date, as circumstances in the opinion of the committee may require, and as may be agreed on between them and said purchaser or purchasers; with good and sufficient security, inhabitants of this State, or with a sufficient deposit of bank or other stock of the United States or of the particular States; which note or bond shall be taken payable at a period not more remote than five years from date, or if by annual instalments so that the last instalment be payable within ten years from date, either in specie or in six per cent., three per cent., or deferred stock of the United States, at the discretion of the Committee.

"That if the Committee shall find that it will be most beneficial to the State or its citizens to form several contracts for the sale of said lands, they shall not consummate any of the said contracts, apart by themselves, while the others lie in a train of negotiation only; but all the contracts which, taken together shall comprise the whole

quantity of the said land, shall be consummated together, and the purchasers shall hold their respective parts or proportions as tenants in common of the whole tract or territory, and not in severalty.

"That the said Committee, in whatever manner they shall find it best to sell the said lands, whether by an entire contract or by several contracts, shall, in no case, be at liberty to sell the whole quantity for a principal sum less than one million dollars in specie, or
92 if day of payment be given, for a sum of less value than one million of dollars in specie, with interest at six per cent. per annum from the time of such sale.

"And also, a further resolve in the words following, viz: This Assembly do appoint John Treadwell, James Wadsworth, Marvin Wait, William Edmond, Thomas Grosvenor, Aaron Austin, Elijah Hubbard, and Sylvester Gilbert, Esquires, a Committee to negotiate a sale of the western lands belonging to this State, lying west of the west line of Pennsylvania, as claimed by said State, according to a resolve for that purpose passed at the present session of the General Assembly."

Know Ye, That we, John Treadwell, James Wadsworth, Marvin Wait, William Edmond, Thomas Grosvenor, Aaron Austin, Elijah Hubbard and Sylvester Gilbert, being the Committee named in said last recited resolve, in pursuance of, and agreeable to, the trust reposed in us by said recited resolve, having formed sundry contracts with divers persons for the sale of said lands, which contracts taken together comprise the whole quantity of said land, and for the consideration of the sum of Twenty-Two Thousand Eight Hundred and Forty-six Dollars, secured to be paid agreeable to the tenor of said resolves, to the full satisfaction of said Committee, by Caleb Atwater of Willingford, in the County of New Haven and State of Connecticut, the receipt whereof is hereby acknowledged: Do, by these presents, in behalf of the State of Connecticut, quit to the said Caleb Atwater, and to his heirs forever, all right, title and interest, juridical and territorial, in and to Twenty-two Thousand Eight Hundred and Forty-six twelve hundred thousand-s of the lands described in said first mentioned resolve, to be held by the said Caleb Atwater as tenant in common of said whole tract of territory with the other purchasers, and not in severalty.

In Testimony Whereof, we have hereunto set our hands and seals the second day of September, Anno Domini, One Thousand Seven Hundred and Ninety-Five.

JOHN TREADWELL.	[L. S.]
JAMES WADSWORTH.	[L. S.]
MARVIN WAIT.	[L. S.]
WILLIAM EDMOND.	[L. S.]
THOMAS GROSVENOR.	[L. S.]
AARON AUSTIN.	[L. S.]
ELIJAH HUBBARD.	[L. S.]
SYLVESTER GILBERT.	[L. S.]

93 Signed, sealed and delivered in presence of
SAMUEL WYLLYS.
JONATHAN INGERSOLL.

STATE OF CONNECTICUT, 88:

HARTFORD, *Sept. 7, A. D. 1795.*

Personally appeared, John Treadwell, James Wadsworth, Marvin Wait, William Edmond, Thomas Grosvenor, Aaron Austin, Elijah Hubbard and Sylvester Gilbert, Esquires, signers and sealers of the foregoing instrument, and acknowledged the same to be their act and deed, before me.

JONATHAN INGERSOLL, *Assistant.*

Received September 9th, 1795, and here recorded.

Teste:

GEORGE WYLLYS, *Secretary.*

The above is a true copy of Records of the State of Connecticut.
Examined by

SAMUEL WYLLYS, *Secretary.*

And further to maintain the issues on its part, the plaintiff offered in evidence thirty-four other deeds from the Connecticut Land Company to various grantees, of certain aliquot parts of the land described in the deed above offered.

It is stipulated and agreed between the parties that the said 34 deeds offered in evidence, contain the same description and are the same in all respects with the deed above set forth, except the names of the grantees and the aliquot parts of land conveyed, and the page- of said Draft Book on which the same are found are respectively as follows, to-wit:

To James Johnson, thirty thousand twelve hundred thousands; page 7.

To Daniel Holbrook, eight thousand seven hundred and fifty twelve hundred thousands; page 9.

To Ephraim Starr, seventeen thousand four hundred and fifteen twelve hundred thousands; page 11.

To Ephraim Kirby, Elijah Boardman and Uriel Holmes, sixty thousand twelve hundred thousands; page 13.

To Henry Champion, 2d eighty-five-thousand six hundred and seventy-five twelve hundred thousands; page 15.

To Asher Miller, thirty-four thousand twelve hundred thousands; page 17.

To James Bull, Aaron Olmsted, and John Wiles, thirty thousand twelve hundred thousands; page 19.

To Moses Cleveland, thirty-two thousand and six hundred twelve hundred thousands; page 21.

94 To Robert Charles Johnson, sixty thousand twelve hundred thousands; page 23.

To Timothy Burr, fifteen thousand two hundred and thirty-one twelve hundred thousands; page 25.

To Joseph Howland and Daniel Lathrop Coit, thirty thousand four hundred and fifty-one twelve hundred thousands; page 27.

To Oliver Phelps and Gideon Granger Junior, eighty thousand twelve hundred thousands; page 29.

To Oliver Phelps, one hundred and sixty-eight thousand one hundred and eighty-five twelve hundred thousands; page 31.

To Solomon Cowles, ten thousand twelve hundred thousands; page 33.

To Sylvanus Griswold, one thousand six hundred and eighty-three twelve hundred thousands; page 35.

To Asabel Hathaway, twelve thousand twelve hundred thousands; page 37.

To Ephraim Root, forty-two thousand twelve hundred thousands; page 39.

To Elisha Hyde and Uriah Tracy, fifty-seven thousand four hundred twelve hundred thousands; page 41.

To William Judd, sixteen thousand two hundred and fifty twelve hundred thousands; page 43.

To Solomon Griswold, ten thousand twelve hundred thousands; page 45.

To Jozeb Stocking and Joshua Stowe, eleven thousand four hundred and twenty-three twelve hundred thousands; page 47.

To Nehemiah Hubbard, Junior, nineteen thousand and thirty-nine twelve hundred thousands; page 49.

To Samuel Phillips Lord, fourteen thousand and ninety-two twelve hundred thousands; page 51.

To Samuel Mather, Junior, eighteen thousand four hundred and sixty-one twelve hundred thousands; page 53.

To William Hart, thirty thousand four hundred and sixty-two twelve hundred thousands; page 55.

To Elias Morgan and Daniel Lathrop Coit, fifty-one thousand four hundred and two twelve hundred thousands; page 57.

To Caldwell and Sanford, fifteen thousand twelve hundred thousands; page 59.

To Joseph Williams, fifteen thousand two hundred and thirty-one twelve hundred thousands; page 61.

95 To Titus Street, twenty-two thousand eight hundred and forty-six twelve hundred thousands; page 63.

To William Law, ten thousand and five hundred twelve hundred thousands; page 65.

To Roger Newbury, Enoch Perkins and Jonathan Brace, thirty-eight thousand twelve hundred thousands; page 67.

To Luther Loomis and Ebenezer King, Junior, forty-four thousand three hundred and eighteen twelve hundred thousands; page 69.

To William Lyman, John Stoddard and David King, twenty-four thousand seven hundred and thirty twelve hundred thousands; page 71.

To Pierpont Edwards, sixty thousand twelve hundred thousands; page 73.

And further to maintain the issues on its part, the plaintiff offered in evidence Deed from the forty-eight people mentioned in the preceding deeds, to John Caldwell, John Morgan and Jonathan Brace, recorded on page 75 of Draft Book of Western Reserve, and a true copy of same is as follows, to-wit:

This Indenture made the fifth day of September in the year one thousand seven hundred and ninety-five by and between Oliver Phelps, Robert Charles Johnson, William Law, Daniel Holbrook, Pierpont Edwards, James Bull, Elisha Hyde, Uriah Tracy, Luther Loomis, Eben'r King, Junior, Roger Newbury, Ephm. Root, Ephm. Kirby, Urial Holmes, Peleg Stanford, Solo. Cowles, Elijah Boardman, Solomon Griswold, Henry Champion, 2d, Samuel P. Lord, Jozeb Stocking, Joshua Stow, Timothy Burr, Caleb Atwater, Titus Street, Elias Morgan, Daniel Lathrop Coit, Joseph Howland, Asher Miller, Ephm. Starr, Joseph Williams, David King, Jun'r, Josh. Pratt, Neh'h Hubbard, Jun'r, William Hart, Samuel Mather, Jun'r, Sylvanus Griswold, Enoch Perkins, Asahel Hathaway William Lyman, Jno. Stoddard, Aaron Olmsted, John Wyles, Gideon Granger, Jun'r, of the first part and John Caldwell, John Morgan and Jonathan Brace all of Hartford in the State of Connecticut of the other part, witnesseth that whereas John Treadwell, James Wadsworth, Marvin Wait, William Edmonds, Thomas Grosvenor, Aaron Austin, Elijah Hubbard and Sylvester Gilbert, Esquires, in pursuance of the trust and authority reposed in them by resolve of the General Assembly of said state have in behalf of said state in and by separate

96 deeds bearing date the second day of September one thousand seven hundred and ninety-five but delivered on the fifth day of said September immediately before the ensembling and delivery hereof quitted to the said parties of the first part and their heirs forever all right, title and interest juridicial and territorial in and to the lands of said state lying west of the west line of Pennsylvania as claimed by said last mentioned state which said lands are otherwise called the Connecticut Western Reserve to be held by the said parties of the first part as tenants in common as by the aforementioned deeds reference thereto being had may more fully appear. And whereas to the intent and purpose that the said parties of the first part and others their associates. Interested in the purchase of said lands may enjoy all the benefits to be devised from the well managing and convenient disposal thereof it is found to be necessary and expedient that the benefits should be conveyed to the said John Caldwell, John Morgan and Jonathan Brace and to their survivors or survivor of them and to the heirs of such survivor. To have and to hold the premises in trust for the benefit and behoof of the said parties of the first part and others their associates and their respective heirs and assigns according to their several and respective proportions and rights to have and enjoy the trust and benefit of the premises which several proportions and rights shall by said trustees be certified to said several and respective parties of the first part and their associates and said John Caldwell, John Morgan and Jonathan Brace and the survivors and survivor of them and the heirs of such survivor shall hold the premises and appurtenances in trust for the purposes aforesaid according to the terms, provisions, restrictions, covenants and agreements contained in the Articles of Agreement constituting the Connecticut Land Company the same being of even date herewith signed by Oliver Phelps, Gid'n Granger, Jun'r, Nehemiah Swift, Moses Cleveland, Wm. Law, Jas. Johnson, Elisha

Hyde, Uriah Tracy, Dan'l Holbrook, Eph'm Root, Solo. Griswold, Thaddeus Leavitt, Eben'r King, Jun'r, Roger Newbury, Elijah White, Enoch Perkins, Wm. Hart, Sam'l Mather, Jr., Caleb Atwater, Neh'h Hubbard, Jun'r, Lem'l Storrs, Henry Champion, Jun'r, Joseph Williams, Peleg Sanford and others reference being had to said Articles in the same manner as if they were herein recited at full length—Now therefore the said parties of the first part in consideration of the premises and for the purposes aforesaid and also

97 in consideration of one dollar to us in hand paid by said parties of the second part. Have severally and respectively remised, released and quit claimed and conveyed and do hereby remise, release and quit claim and convey to the said John Caldwell, John Morgan and Jona. Brace and to the survivors and survivor of them and the heirs of such survivor all the interest, right and title juridicial and territorial which the said parties of the first part or any of them have ever had or ought to have by virtue of the aforesaid first mentioned deeds in and to the premises (viz.) the lands of Connecticut lying west of the west line of Pennsylvania as claimed by the last mentioned state. To have and to hold the premises and the appurtenances thereof to them the said John Caldwell, John Morgan and Jona. Brace and the survivors and survivor of them and to the heirs of such survivor in trust for the benefit and behoof of said parties of the first part and their associates and their respective heirs and assigns according to the terms, provisions, restrictions, covenants and agreements contained in said articles of agreement constituting said Connecticut Land Company and the said parties of the first part severally each one for himself, his heirs, executors and administrators covenant that they have not in any way incumbered the premises excepting by deed of even date herewith executed by the said parties of the first part releasing and quit claiming to Oliver Phelps, Wm. Hart, Samuel Mather, Jun'r, all the right and title of the said parties of the first part in and to so much of the aforesaid lands as is over and above Three Millions of Acres exclusive of the waters of Lake Erie and of all prior grants and incumbrances which deed was executed to the Grantees therein named in trust according to the terms therein expressed reference thereto being had—

In Witness Whereof We the aforementioned parties have hereunto interchangeably set our hands and seals the day and year first above written.

JNO. MORGAN.	[L. S.]
JONA. BRACE.	[L. S.]
ASHER MILLER.	[L. S.]
PELEG SANFORD.	[L. S.]
JAZEB STOCKING	[L. S.]
EBENR. KING, JUN'R.	[L. S.]
LUTHER LOOMIS.	[L. S.]
PIERPT. EDWARDS.	[L. S.]
GIDN. GRANGER, JR.	[L. S.]
ELIAS MORGAN.	[L. S.]
ROGER NEWBURY.	[L. S.]

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JOHN CALDWELL.	[L. S.]
JOSEPH WILLIAMS.	[L. S.]
WM. LAW.	[L. S.]
ELIJAH BOARDMAN.	[L. S.]
WM. JUDD.	[L. S.]
ROBT C. JOHNSON.	[L. S.]
ASAH EL HATHAWAY.	[L. S.]
JOHN STODDARD.	[L. S.]
WM. LYMAN.	[L. S.]
DAVID KING.	[L. S.]
ENOCH PERKINS.	[L. S.]
URIAH TRACY.	[L. S.]
URIEL HOLMES.	[L. S.]
AARON OLMSTED.	[L. S.]
JOHN WYLES.	[L. S.]
SAM'L P. LORD.	[L. S.]
JOSHUA STOW.	[L. S.]
EPHM. STARR.	[L. S.]
MOSES CLEVELAND.	[L. S.]
JAMES JOHNSTON.	[L. S.]
HENRY CHAMPION, 2D.	[L. S.]
NEHH. HUBBARD, JR.	[L. S.]
SOLO. GRISWOLD.	[L. S.]
JAS. BULL.	[L. S.]
EPH. ROOT.	[L. S.]
WM. HART.	[L. S.]
DAN'L HOLBROOK.	[L. S.]
SAMUEL MATHER, JR.	[L. S.]
JOSH. HOWLAND.	[L. S.]
DAN'L LATHROP COIT.	[L. S.]
ELISHA HYDE.	[L. S.]
SOLO. COWLES.	[L. S.]
CALEB ATWATER.	[L. S.]
OLIVER PHELPS.	[L. S.]
EPHM. KIRBY.	[L. S.]
TIMO. BURR.	[L. S.]
SYLVANUS GRISWOLD.	[L. S.]

Signed, sealed and delivered in presence of

SAM'L WYLLYS.
JAMES THOMAS.
ROGER WHITTLESY.

Witness to the Signature of Pierpont Edwards.

NATHAN ELLIOTT,

Witness to Joseph Williams & Wm. Law

Signing the Above Deed.

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Hartford County, ss., City of Hartford, September the eighth, one thousand seven hundred and ninety-five personally appeared Ephm. Starr, Moses Cleveland, Jas. Johnson, Henry Champion 2d, Nehh. Hubbard Jun'r, Solo. Griswold, Jas. Bull,

Ephm. Root, Wm. Hart, Danl. Holbrook, Samuel Mather, Josh. Howland, Dan'l Lathrop Coit, Elisha Hyde, Solo. Cowles, Caleb Atwater, Oliver Phelps, Ephraim Kirby, Timo. Burr, Sylvanus Griswold, Elijah Boardman, Wm. Judd, Rob't Charles Johnson, Asahel Hathaway, Jno. Stoddard, Wm. Lyman, David King, Enoch Perkins, Uria Tracy, Urial Holmes, Jun'r, Jno. Wyles, Aaron Olmsted, Sam'l P. Lord, Peleg, Sanford, Jabez Stocking, Ebenr. King, Jun'r, Joshua Stow, Jno Morgan, Jona Brace the signers and ensalers of the within instrument and acknowledged the same to be their free act and deed.

Before me Sam'l Wyllys, Juste. Pacs.

Hartford County, ss., City of Hartford, September the ninth, one thousand seven hundred ninety-five personally appeared Asher Miller, Luther Loomis, the signers and ensalers of the within instrument and acknowledged the same to be their free act and deed.

Before me Samuel Wyllys, Justice of the Peace.

Hartford County, ss., City of *Crawford*, September sixteenth, one thousand seven hundred and ninety-five personally appeared Pierpt. Edwards, Jona Brace and Gideon Granger, Jr., signers and sealers of the within instrument and acknowledged the same to be their free act and deed. Before me Samuel Wyllys, Justice of the Peace.

Hartford County, ss., City of Hartford, September sixteenth, one thousand seven hundred and ninety-five personally appeared Roger Newbury, John, Caldwell and Elias Morgan, signers and sealers of the within instrument and acknowledged the same to be their free act and deed. Before me Samuel Wyllys, Justice of the Peace.

Hartford County, ss., City of Hartford, October sixth day A. D. 1795. There personally appeared Joseph Williams and Wm. Law signers and sealers of the within instrument and acknowledged the same to be their free act and deed. Before me, Samuel Wyllys, Justice of the Peace.

Received April 8th, 1796, and entered at large on the Public Records of the State of Connecticut for Deed Surveys and Patents of Land Book No. 5, page 97. Teste Samuel Wyllys, Secretary.

And further to maintain the issues on its part, the plaintiff
100 offered in evidence Articles of Association and Agreement
Constituting the Connecticut Land Company, Page 79, Draft
Book of Western Reserve, and a true copy of same is as follows, to-wit:

Articles of Association and Agreement Constituting the Connecticut Land Co.

Article 1st. It is agreed that the individuals concerned in the purchase made this day of the Connecticut Western Reserve shall be called the Connecticut Land Company.

Article 2nd. It is agreed that the Committee appointed by the applicants for purchasing said reserve shall receive from the Committee of whom said purchase has been made each deed which shall be executed to a purchaser and in their hands shall retain said deed until the proprietors thereof shall execute a deed in trust to John

Caldwell, Jona. Brace and John Morgan, and the survivors of them, and the last survivor of said three persons and his heirs forever, to hold in trust for such proprietor his share in said purchase to be disposed of as directed and agreed in the following articles.

Article 3rd. It is agreed that seven persons shall be appointed by the Company at a meeting to be holden this day at the house of John Lee in Hartford who shall be a Board of Directors for said Company and that said directors or majority thereof shall have power at the expense of said company, to procure an extinguishment of the Indian title to said reserve if said title be not already extinguished to survey the whole of said reserve and to lay the same out into townships containing sixteen thousand acres each; to fix on a township in which the first settlement shall be made, to survey that township into small lots in such manner as they shall think proper, and to sell and dispose of said lots to actual settlers only. To erect in such township a saw mill and grist mill at the expense of said company; to lay out and sell five other townships of sixteen thousand acres each to actual settlers only; and the said trustees shall execute deeds of such part or parts of said townships as shall be sold by said directors to said purchasers; but in case there shall be any salt spring or springs in said townships or in any or either of them, said directors shall not sell said spring or springs but shall reserve the same together with two thousand acres of land, inclosing said spring

101 or springs; said directors shall also have power to extinguish if possible, the Indian title if any, to said Reserve and to make all said surveys two years from this date and sooner if possible; and when said Indian title if any shall have been extinguished and said surveys made said trustees or a majority thereof shall convey to each proprietor of said reserve or any member who shall agree his or their proportion or right thereon in severalty. The mode of dividing said reserve however to be in conformity to the orders and directions of the major part of the proprietors assembled at any meeting of the proprietors convened and holden according to the mode hereinafter marked out.

Article 4th. It is also agreed that said Directors shall cause the person employed by them in surveying said reserve to keep a regular Field Book describing minutely and accurately the situation, soil, waters, kinds of timber and natural productions of each township surveyed by them, which Books said Directors shall cause to be kept in the office of the Clerk of said Directors and the said book shall be open to the inspection of each proprietor at all times.

Article 5th. It is agreed that said Directors shall appoint a clerk who shall keep a regular Journal of all the votes and proceedings of said directors and of the money disbursed by them for the use of the Company, and said directors shall determine the wages of such Clerks, and the said Directors shall in a year settle their accounts with the proprietors; and that all moneys received by the directors for taxes and the sale of lands shall be subject to the disposal and direction of the Company.

Article 6th. It is agreed that the Trustees shall give certificates agreeable to the form hereinafter prescribed to all the proprietors in

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the original purchase made from this State; and that the Grantees from said State shall lodge with the trustees the names of the proprietors for whom they respectively receive deeds and the proportions of land to which said proprietors are entitled; a copy of which shall be lodged by the Trustees with the Clerk of Directors. It is further agreed that all transfers made by any proprietors shall be recorded in the Book of the Clerk of all the Directors, and no person claiming as an assignee shall be acknowledged as such until his deed shall have been thus recorded.

Article 7th. It is agreed in order to enable said Board of Directors to perform and accomplish the business assigned them, that
102 there shall be paid to tax in the proportion of ten dollars on each of the shares of the company to the Clerk of the Directors, to be at the disposal of said Directors for the purposes aforesaid which said tax shall be paid to said clerk on or before the sixth day of October next.

Article 8th. It is agreed that the whole of said reserve shall be divided into four hundred shares and that the following shall be the mode of voting by the proprietors in their meetings. Every proprietor of one share shall have one vote and every proprietor of more than one share shall have one vote for the first share and then one vote for every two shares till the number of forty shares and then one vote for every five shares; provided that the question of the time of making a partition of the territory every share shall be entitled to one vote.

Article 9th. It is agreed that the aforesaid trustee shall on receiving a deed from any purchaser according to the tenor of these articles give to such proprietor a certificate in the words following:

CONNECTICUT LAND COMPANY, ss.:

HARTFORD, Sept. 5th, 1795.

This certifies that — — — is entitled to the trust and benefit of — Twelve Hundred Thousandths of the Connecticut Western Reserve so-called as held by John Caldwell, Jonathan Brace and John Morgan, Trustees in a Deed of trust, dated the fifth day of September. One thousand seven hundred and ninety-five to hold said proportion on — share to — the said — Heirs and assigns according to the terms, conditions, covenants and exceptions contained in the said deed of trust, and in certain Articles of Agreement entered into by the persons composing the Connecticut Land Company; which said share transfer-able by assignment under hand and seal witnessed by two witnesses and acknowledged before any Justice of the Peace in the State of Connecticut or before a Notary Public or a Judge of the Common Pleas in any of the United States and to be recorded by the clerk of the Board of Directors.

— — —
— — —
— — —

Trustees.

Which said certificate shall be complete evidence to such person of his right in said reserve and shall be recorded by the Clerk of the Directors in the Book which said Clerk shall keep for the purpose of registering Deeds.

103 Article 10th. It is agreed that the first meeting of said

Company be at the State House in Hartford on Tuesday the 6th of October next at two of the clock in the afternoon at which meeting the mode of making partition shall be determined by the major vote of the proprietors then present taking such votes by the principals hereinbefore marked out. It is also agreed that in all meetings of the Company the proprietors shall be admitted to vote in person or by their proper attorney legally authorized. And it is further agreed that there shall be a meeting of the Company at the State House in Hartford at two o'clock in the afternoon the Monday next before the second Tuesday in October, 1796, and another meeting of said Company at the same place at two o'clock in the afternoon the Tuesday next before the second Thursday in October, One thousand seven hundred and ninety-seven; and that the said Directors shall have power to call occasionally meetings at such times as they may think proper, but such meetings shall always be at Hartford and said Directors shall give notice in some one newspaper in each County in Connecticut where newspapers are published of the time and place of holding said meeting whether stated or occasional, by publishing such notification in such papers under their hands, for three weeks successively within six weeks next before the day of such meeting.

Article 11th. And whereas some of the proprietors may choose that their proportions of said reserve should be divided to them in one lot or location; It is agreed that in case one-third in value of the owners shall after a survey of said reserve in townships, signify to said directors or meeting, a request that such third part be set off in manner aforesaid, that said directors may appoint three Commissioners who shall have power to divide the whole of said purchase into three parts equal in value according to quantity, quality and situation and when said commissioners shall have so divided said reserve and made report in writing of their doings to said directors, describing precisely the boundaries of each part, the said directors shall call a meeting of said proprietors giving the notice required by these articles and at such meeting the said three parts shall be incumbered and the numbers of each part shall be written on a separate piece of paper and shall in the presence of such meeting be by the Chairman of said meeting put into a box and a person appointed

104 by said meeting for that purpose shall draw out of said box one of said numbers and the part designated by such number shall be apated to such person or persons requesting such a severance; And the said Trustees shall upon receiving a written direction from said directors for that purpose execute a deed to such person or persons accordingly after which said person or persons shall have no power to act in said company.

Article 12th. It is agreed that the Company shall have power by a major vote to raise money by a tax on the proprietors to be appor-

tioned equally to each proprietor, according to his interest and in case any proprietor shall neglect to pay his proportion of said tax within fifty days when the proprietor lives in this State if out of the State within one hundred and twenty days after the same shall become payable, and after the publication thereof in the newspapers of this State in the manner provided for warning meetings that the directors shall have power to dispose of so much of the interest of such delinquent proprietor in reserve, as may be necessary to pay the tax so as aforesaid due and unsatisfied and in case any proprietor shall neglect to pay the tax of Ten dollars upon a share agreed to by these articles, within fifty days after the time of payment so much of his share as will raise his part of said tax may be sold as aforesaid.

Article 13th. In case of the death of any one or more of the trustees the Company may appoint a successor to such deceased person or persons in said trust, and upon such appointment being made the surviving Trustee or Trustees shall pass a deed or deeds to such successor or successors to hold the premises as Co-Trustees with the surviving Trustees in the same manner as the original Trustees hold the same.

Article 14th. It is agreed that the directors in transacting the business of said Company according to the articles aforesaid shall be subject to the control of said Company by a vote of at least three fourths of the Interest of said Company.

Hartford, September 5th, 1795.

ASHER MILLER,
EPHRAIM KIRBY,
ELIJAH BOARDMAN,
URIAL HOLMES, JR.,
EPHRAIM STARR,
LUTHER LOOMIS,
ROGER NEWBURY,
JUSTIN ELY,
ELISHA STRONG,
JOSHUA STOW,
JOSEB STOCKING,
SOLOMON COWLES,
JONA. BRACE,
DAN'L L. COIT,
JOSEPH HOWLAND,
PIERPONT EDWARDS,
JAMES BULL,
TITUS STREET,
WILLIAM JUDD,
ROBT C. JOHNSON,
SAM'L P. LORD,
OLIVER HELPS,
GIDEON GRANGER, JR.,
NEPHENIAH SWIFT,
MOSES CLEVELAND,
WILLIAM LAW,
JAMES JOHNSON,

ELISHA HYDE,
 URIAH TRACY,
 WILLIAM LYMAN,
 DAN'L HOLBROOK,
 EPHM. ROOM,
 SOLO. GRISWOLD,
 THADDEUS LEAVITT,
 EBENR. KING, JR.,
 ROGER NEWBURY,
 ELIJAH WHITE,
 ENOCH PERKINS,
 WM. HART,
 SAM'L MATHER, JR.,
 CALEB ATWATER,
 NEHHL. HUBBARD, JR.,
 LEMUEL STORRS,
 JOSEPH WILLIAMS,
 PELEG SANDFORD,
 WM. M. BLISS,
 JNO. STODDARD,
 WM. BATTLE,
 BENAJAH KENT,
 TIMO. BURR,
 ELIPHALET AUSTIN,
 JOSEPH C. YATES,
 SAM'L MATHER,
 SYLVESTER GRISWOLD,
 HENRY CHAMPION 2d,
 ASAHEL HATHAWAY,
 DAVID KING,

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*In Behalf of Themselves and Their Associates in
 Albany, State of New York.*

And further to maintain the issues on its part, the plaintiff offered in evidence a copy of the Charter from Charles II. King of England, to Connecticut, found in Hollister's History of Connecticut, Vol. 1, page 476 (published in 1855), and a true copy of said charter is as follows, to-wit:

Charter of 1662.

Charles the Second, By the Grace of God, King of England, Scotland, France and Ireland, defender of the Faith, &c.: To all to whome their presents shall come, Greeting: Whereas, by the severall Navigations, discoverys and successful Plantations of diverse of our loveing Subjects of this our Realme of England, Severall Lands, Islands, Places, Colonies and Plantatons have byn obtained and settled in that parte of the Continent of America called New England, and thereby the Trade and Commerce there hath byn of late years much increased, And Whereas, wee have byn informed by the humble petition of our Trusty and welbeloved John Winthrop,

John Mason, Samuel Willis, Henry Clerke, Mathew Allen, John Tappen, Nathan Gold, Richard Treat, Richard Lord, Henry Wollicott, John Talcott, Daniel Clerke, John Ogden, Thomas Wells, Obedias Brewen, John Clerke, Anthony Hawkins, John Deming and Mathew Camfeild, being Persons Principally interested in our Colony or Plantation of Connecticut in New England, that the same Colony or the greatest parte thereof was purchased and obtayned for greate and valuable Consideration, And some other part thereof gained by Conquest and with much difficulty, and att the onely endeavors, expence and Charge of them and their Associates, and those under whome they Clayme, Subdued and improved, and thereby become a considerable enlargement and addition of our Dominions and interest there,—Now Know Yea, that in Consideration thereof, and in regard the said Colony is remote from other the English Plantations in the places aforesaid, And to the end the Affaires and business which shall from tyme to tyme happen or arise concerning the same may bee duly Ordered and managed, Wee Have thought fitt, and att the humble Petition of the Persons aforesaid, and are graciously pleased to create and make them a Body Politique and Corporate, with the powers and privileges hereinafter mentioned: And accordingly Our will and pleasure is, and of our speciall grace,

107 certaine knowledge and meere motion. Wee Have Ordeyned, Constituted and Declared, And by theis presents for us, our heires and successors, Doe Ordeine, Constitute and Declare That they, the said John Winthrop, John Mason, Samuell Willis, Henry Clerke, Mathew Allen, John Tappen, Nathan Gold, Richard Treat, Richard Lord, Henry Wolcott, John Talcot, Daniell Clerke, John Ogden, Thomas Wells, Obadiah Brewen, John Clerke, Anthony Hawkins, John Deming and Matthew Camfeild, and all such others as now *are* hereafter shall bee admitted and made free of the Company and society of our Collony of Connecticut in America, shall from tyme to tyme and for ever hereafter, bee one Body corporate and Politique in fact and name, by the Name of Governour and Company of the English Collony of Connecticut in New England in America; And that by the same name they and their Successors shall and may have perpetual Succession, and shall and may bee Persons able and capable in the law to plead and be impleaded, to answere and bee answered unto, to defend and be defended in all and singuler suits, causes, quarrelles, matters, actons and things of what kind or nature soever, And also to have, take, possesse, acquire and purchase lands, Tenements or hereditaments, or any goods or chattels, and the same to lease, graunt, demise, alien, bargain, sell and dispose of, as other our leige People of this our Realme of England, or any other corporation or Body Politique within the same may lawfully doe. And Further, that the said Governour and Company, and their Successors shall and may forever hereafter have a Common Seale to serve and use for all Causes, matters, things, and affaires whatsoever of them and their Successors, and the Same Seale to alter, change breake and make new from tyme to tyme att their wills and pleasures, as they shall think fitt. And further, wee will and Ordeine, and by theis presents for us, our heires and Successors,

Doe Declare and appoint that for the better ordering and managing of the affaires and businesse of the said Company and their Successors, there shall bee one Governour, one Deputy Governour and Twelve Assistants, to bee from tyme to tyme Constituted, Elected and Chosen out of the Freemen of the said Company for the tyme being, in such manner and forme as hereafter in these presents is expressed; which said Officers shall apply themselves to take care for the best disposing and Ordering of the Generall business and affaires of and concerning the lands and hereditaments herein after mentioned to bee granted, and the Plantation thereof and the Government of the People thereof. And for the better execution of our Royall Pleasure herein, Wee Doe for us, our heires and Successors, Assigne, name, Constitute and appoint the aforesaid

108 John Winthrop to bee the first and present Governour of the said Company; and the said John Mason to bee the Deputy Governour; And the said Samuel Willis, Mathew Allen, Nathan Gold, Henry Clerke, Richard Treate, John Ogden, Thomas Tappen, John Talcott, Thomas Wells, Henry Woolcot, Richard Lord and Daniell Clerke to bee the Twelve present Assistants of the said Company; to contynue in the said severall offices respectively, untill the second Thursday which shall be in the Moneth of October now next cominge. And further, we will, and by theis presents for us, our heires and Successors, Doe Ordaine and Graunt that the Governour of the said Company for the tyme being, or, in his absence by occasion of sickness, or otherwise by his leave or permission, the Deputy Governour for the tyme being, shall and may from tyme to tyme upon all occasions give Order for the assembling of the said Company and calling them together to consult and advise of the businesse and Affaires of the said Company, And that for ever hereafter, Twice in every yeare, That is to say on every second Thursday in October and on every second Thursday in May, or oftener, in Case it shall bee requisite. The Assistants and freemen of the said Company, or such of them (not exceeding twoe Persons from each place, Towne or City) who shall from tyme to tyme thereunto Elected or Deputed by the majore parte of the freemen of the respective townes, Cities and Places for which they shall bee soe elected or deputed, shall have a generall meeting or Assembly, then and their to Consult and advise in and about the affaires and businesse of the said Company; And that the Governour, or in his absence the Deputy Governour of the said Company for the tyme being, and such of the assistants and freemen of the said Company as shall be soe elected or deputed and bee present att such meeting or Assembly, or the greatest Number of them, whereof the Governour or Deputy Governour and Six of the Assistants at least (to bee seav'n) shall be called Generall Assembly, and shall have full power and authority to alter and change their days and tymes of meeting or Generall Assemblies for electing the Governour, Deputy Governour and Assistants or other Officers, or any other Courts, Assemblies or meetings, and to Choose, Nominate and appoint such and soe many other Persons as they shall thinke fitt and shall bee willing to accept the same, to bee free of the said Company and Body Politique, and

them into the same, to Admitt and to Elect, and Constitute such Officers as they shall thinke fitt and requisite for the Ordering, managing and disposing of the Affaires of the said Governour and Company and their Successors. And Wee Doe hereby for us, or heirs and Successors, Establish and Ordeine, that once in the

109 years for ever hereafter namely, the second Thursday in May, the Governour, Deputy Governour and Assistants of the said Company and other Officers of the said Company, or such of them as the said Generall Assembly shall thinke fitt, shall bee in the said General Court and Assembly to bee held from that day or tyme newly chosen for the yeare ensuing, by such greater part of the said Company for the tyme being then and there present. And if the Governour, Deputy Governour and Assistants by these presents appointed, or such as hereafter bee newly Chosen into their Roomes, or any of them, or any other the Officers to bee appointed for the said Company shall dye or bee removed from his or their severall Offices or places before the said Generall day of Election, whome we doe hereby Declare for any mindemeanour or default to be removeable by the Governour, Assistants and Company, or such greater part of them in any of the said publique Courts to bee assembled as is aforesaid, That then and in every Case itt shall and may be lawful to and for the Governour, Deputy Governour and Assistants and Company aforesaid, or such greater parte of them soe to bee Assembled as is aforesaid in any of their Assemblies to proceede to a New Election of one or more of their Company in the Roome or place, Roomes or Places of such Governour, Deputy Governour, Assistant or other Officer or Officer- soe dyeing or removed, according to their discretions; and immediately upon and after such Electon or Electons made of such Governour, Deputy Governour, Assistant or Assistants, or any other Officer of the said Company in manner and forme aforesaid, The Authority, Office and Power before given to the former Governour, Deputy Governour or other Officer and Officers so removed, in whose stead and Place new shall be chosen, shall as to him and them and every of them respectively cease and determine. Provided, alsoe, and our will and pleasure is, That as well such as are by theis presents appointed to bee the present Governour, Deputy Governour and Assistants of the said Company as those that shall succeed them, and all other Officers to be appointed and Chosen as aforesaid, shall, before they undertake the Execution of their said Offices and Places respectively, take their severall and respective Corporal Oathes for the due and faithful performance of their duties in their severall Offices and Places, before such Person or Persons as are by these presents hereafter appoynted to take and receive the same; That is to say, the said John Winthrop, whoe is herein before nominated and appointed the present Governour of the said Company, shall take the said Oath before one or more of the Masters of our Court of Chancery for the tyme being, unto which Master

110 of Chancery Wee Doe, by theis presents, give full power and authority to Administer the said Oath to the said John Winthrop accordingly. And the said John Mason, whoe is herein before nominated and appointed the present Deputy Governour of

the Company, shall take the said Oath before the said John Winthrop, or any twoe of the Assistants of the said Company, unto whome Wee Doe by these presents, give full power and authority to Administer the said Oath to the said John Mason accordingly. And the said Samuell Willis, Henry Clerke, Mathew Allen, John Tappen, Nathan Gold, Richard Treate, Richard Lord, Henry Woolcott, John Taleott, Daniell Clerke, John Ogden and Thomas Welles, whoe are herein before Nominated and appointed the present Assistants of the said Company, shall take the Oath before the said John Winthrop and John Mason, or one of them, to whome Wee Doe hereby give full power and authority to administer the same accordingly. And our further will and pleasure is, that all and every Governour or Deputy Governour to bee elected and Chosen by vertue of theis presents, shall take the said Oath before two or more of the Assistants of the said Company for the tyme being, unto whome wee doe, by theis presents, give full power and authority to give and administer the said Oath accordingly. And the said Assistants and every one of them, and all and every other Officer or Officers to bee hereafter Chosen from tyme to tyme, to take the said Oath before the Governour or Deputy Governour for the tyme being, unto which said Governour or Deputy Governour wee doe, by theis presents, give full power and authority to Administer the same accordingly. And Further, of our own ample grace, certeine knowledge and meere moton Wee Have given and graunted, and by theis presents, for us, our heirs and Successors, Doe give and Graunt unto the said Governour and Company of the English Colony of Connecticut in New England in America, and to every inhabitant there, and to every Person and Persons tradeing thither, And to every Person or Persons as are or shall bee free of the said Colony, full power and authority from tyme to tyme and att all tymes hereafter, to take, Ship, Transport and Carry away, for and towards the Plantaton and defence of the said Collony such of our loveing Subjects and Strangers as shall or will willingly accompany them in and to their said Collony and Plantaton: (Except such Person and Persons as are or shall be therein restrayned by us, our heirs and Successors;) And alsoe to Ship and Transport all and all manner of goods, Chatels, Merchandizes and other things whatsoever that are or shall bee usefull or necessary for the Inhabitants of the said Collony and may lawfully bee Transported thither: Nevertheless, not to bee discharged of payment to us, our heirs and Successors, of the 111 duties, Customs and Subsidies which are or ought to be paid or payable for the same. And Further, Our will and pleasure is, and We Doe for us, our heirs and Successors, Ordeyne, Declare and Graunt unto the said Governour and Company and their Successors, That all and every the Subjects of us, our heires or Successors, which shall go to inhabit within the said Collony, and every of their Children which shall happen to bee borne there or on the Sea in goeing thither or returneing from thence, sall have and enjoye all liberties and immunities of free and naturall Subjects within any the Dominions of us, our heires or Successors, to all intents, Constructons and purposes whatsoever as if they and every of them were

borne within the Realme of England. And Wee Doe authorize and impower the Governour, or in his absence the Deputy Governour for the tyme being, to appoint two or more of the said Assistants att any of their Courts or Assemblies to bee held as aforesaid, to have power and authority to Administer the Oath of Supremacy and obedience to all and every Person and Persons which shall att any time or tymes hereafter goe or passe into the said Colony of Connecticut unto which said Assistants soe to be appointed as aforesaid, Wee Doe, by these presents, give full power and authority to Administer the said Oath accordingly. And Wee Doe Further, of our special grace, certaine knowledge and meere moton, give and graunt unto the said Governour and Company of the English Colony of Connecticut in New England in America, and their Successors, that itt shall and may bee lawful to and for the Governour or Deputy Governour and such of the Assistants of the said Company for the tyme beinge as shall bee assembled in any of the General Courts afore- said, or in any courts to be especially summoned or Assembled for that purpose, or the greater parte of them, whereof the Governour or Deputy Governour and Six of the Assistants, (to bee all wayes Seaven) to Erect and make such Judicatories for the hearing and Determining of all Actons, Causes matters and things happening within the said Colony or Plantaton and which shall bee in dispute and depending there, as they shall think fitt and convenient; And alsoe from tyme to tyme to Make, Ordaine, and Establish All manner of wholesome and reasonable Lawes, Statutes, Ordinances, Directons and Instructons, not contrary to the lawes of this Realme of England, as well for settling the forms and Ceremonies of Government and Magistracy fitt and necessary for the said Plantaton and the Inhabitants there as for nameing and stileing all sorts of Officers, both superior and inferior, which they shall find needful for the Government and Plantaton of the said Colony, and distinguishing and setting forth of the severall Dutyes.

112 Powers and Lymitts of every such Office and Place, and the formes of such Oathes, not being contrary to the Lawes and Statutes of this our Realme of England, to bee Administered for the execution of the said severall Offices and Places; As alsoe for the disposing and Ordering of the Electon of such of the said Officers as are to bee Annually Chosen, and of such others as shall succeed in case of death or removall, and Administering the said Oath to the new Elected Officers, and Graunting necessary Commissions, and for imposing of Lawful fines, Mulets, Imprisonment or other Punishment upon Offenders and Delinquents, according to the Course of other Corporatons within this our Kingdome of England, and the same Lawes, fines, Mulets and Executons to alter, change, revoke, adnull, release or Pardon, under their Common Seale. As by the said General Assembly or the major parte of them shall bee thought fitt; And for the directing, ruleing, and disposing of all other matters and things whereby our said people, Inhabitants there, may bee soe religiously, peaceably and civilly Governed as their good life and orderly Conversaton may wynn and invite the Natives of the Country to the knowledge and obedience of the

only true God and Saviour of mankind, and the Christian faith, which in our Royall Intentions and the Adventurers free profession is the onely and principall end of this Plantaton: Willing, Commanding and requireing, and by these presents, for us, our heires and Successors, Ordaincing and appointeing That all such Laws, Statutes and Ordinances, Instructons, Impositons and Directons as shall bee soe made by the Governor, Deputy Governor and Assistants, as aforesaid, and published in writeing under their Common Seale, shall carefully and duely bee observed kept, performed and putt in executon according to the true intent and meaning of the same. And these our letters Patent, or the Duplicate or Exemplification thereof, shall bee to all and every such Officers Superiors and Inferiors, from tyme to tyme for the Putting of the same Orders, Lawes, Statutes, Ordinances, Instructons and Directons in due Execution, against us, our heires and Successors, a sufficient warrant and discharge. And Wee Doe Further, for us, our heires and Successors, give and graunt unto the said Governour and Company and their Successors, by these presents, That itt shall and may bee lawful to and for the Cheife Commanders, Governors and Officers of the said Company for the tyme being whoe shall bee resident in the parts of New England hereafter mentioned, and others inhabiting there by their leave, aduittance, appointment or directon, from tyme to tyme and att all

113 tymes hereafter, for their speciall defence and safety, to

Assemble, Martiall, Array and putt in Warlike posture the Inhabitants of the said Colony, and to Commissionate, Impower and authorise such Person or Persons as they shall thinke fitt to lead and Conduct the said Inhabitants, and to encounter, expulse, repell and resist by force of Armes, as well by Sea as by land. And alsoe to kill, Slay and destroy, by all fitting ways, enterprizes and means whatsoever, all and every such Person or Persons as shall att any tyme hereafter Attempt or enterprize the distructon, invasion, detriment or annoyance of the said Inhabitants or Plantaton, And to use and exercise the Law Martiall in such cases onely as occasion shall require. And to take or surprize by all wayes and meanes whatsoever, all and every such Person or Persons, with their Shippes, Armour, Ammunition, and other goods of such as shall in such hostile manner invade or attempt the defeating of the said Plantaton or the hurt of the said Company and Inhabitants; and upon just Causes to invade and destroy the Natives or other Enemyes of the said Colony. Nevertheless, Our Will and pleasure is, And Wee Doe hereby declare unto all Christian Kings, Princes and States, That if any Person which shall hereafter bee of the said Company or Plantaton, or any other, by appointment of the said Governor and Company for the tyme being, shall att any time or tymes hereafter Robb or Spoile by Sea or by land, and doe any hurt, violence or unlawful hostility to any of the Subjects of us, our heires or Successors, or any of the Subjects of any Prince or State beinge then in league with us, our heires or Successors, upon Complaint of such injury done to any such Prince or State, or their Subjects, Wee, our heires and Successors will make open Proclama-

ton within any parts of our Realme of England fitt for that purpose, That the Person or Persons committinge any such Robbery or Spoile, shall within the tyme limited by such Proclamaton, make full restituton or satisfacton of all such injuries done or committed, Soe as the said Prince or others so complayneing may bee fully satisfied and contented. And if the said Person or Persons whoe shall committ any such Robbery or Spoile shall not make satisfacton accordingly, within such tyme soe to be limited, That then itt shall and may bee lawfull for us, our heires and Successors, to putt such person or Persons out of our Allegiance and Protection. And that itt shall and may bee lawful and free for all Princes or others to Prosecute with hostility such offenders and every of them, their and every of their Procurers, ayders Abettors and Councillors in that behalfe. Provided, alsoe, and our expresse will and pleasure is, And Wee Doe by these presents for us, our heires and

114 Successors, Ordeyne and appointe that these presents shall not in any manner hinder any of our Loveing Subjects whatsoever to use and exercise the Trade of Fishinge upon the Coast of New England in America, but they and every or any of them shall have full and free power and liberty to contynue and use the said Trade of Fishing upon the said Coast, in any of the Seas thereunto adjoyning, or any Armes of the Seas or Salt Water Rivers where they have byn accustomed to Fish, And to build and sett upon the wast land belonging to the said Colony of Conecticut, such Wharfes, Stages and workhouses as shall bee necessary for the Salting, dryeing and keeping of their Fish to bee taken or gotten upon that Coast,—any thinge in these presents conteyned to the contrary notwithstanding. And Know Yee Further, That Wee, of our more abundant grace, certaine knowledge and meere moton Have given, Graunted and Confirmed, And by theis presents, for us, our heires and Successors, Doe give, Graunt and confirme unto the said Governour and Company and their Successors, All that parte of our Dominions in Newe England in America bounded on the East by Norrogancett River, commonly called Norrogancett Bay, where the said River falleth into the Sea, and on the North by the lyne of the Massachusetts Plantation, and on the South by the Sea, and in longitude as the lyne of the Massachusetts Colony, runninge from East to West; that is to say, from the said Narrogancett Bay on the East to the South Sea on the West parte, with the Islands thereunto adjoyneinge, Together with all firme lands, Soyles, Grounds, Havens, Ports, Rivers, Waters, Fishings, Mynes, Myneralls, Precious Stones, Quarries and all and singular other Commodities, Jurisdiction, Royalties, Privileges, Franchises, Preheminences and hereditaments whatsoever within the said Tract, Bounds, lands and Islands aforesaid, or to them or any of them belonging, To Have And To Hold the same unto the said Governour and Company, their Successors and Assigns, forever upon Trust and for the use and benefit of themselves and their Associates, freemen of the said Colony, their heires and Assigns, To Bee Holden of us, our heires and Successors, as of our Manor of East Greenwich, in Fee and Comon Socceage, and not in Capite nor by Knights

Service, Yielding And Payinge therefore to us, our heirs and Successors onely the Fifth parte of all the Oare of Gold and Silver which from tyme to tyme and att all tymes hereafter shall bee there gotten, had or obteyned, in lieu of all Services, Dutyes and Demaunds whatsoever, to bee to us, our heirs or Successors, therefore or thereout rendered, made or paid. And Lastly, Wee doe for us,

our heires and Successors, Graunt to the said Governor and
 115 Company and their Successors, by these presents, that these our Letters Patent shall bee firme good and effectuell in the lawe to all intents, Constructons and purposes whatsoever, accordinge to our true intent and meaneing herein before Declared, as shall bee Construed, reputed and adjudged most favourable on the behalfe and for the best benefitt and behoofe of the said Governor and Company and their Successors. Although Express Mention of the true yearely value or certainty of the premises, or of any of them, or of any other Guifts or Graunts by us or by any of our Progenitors or Predecessors heretofore made to the said Governor and Company of the English Colony of Connecticut in New England in America aforesaid in theis presents is not made, or any Statute, Act, Ordinance, Provision, Proclamation or Restriction heretofore had, made, Enacted, Ordeyned or Provided, or any other matter, Cause or thinge whatsoever to the contrary thereof in any wise notwithstanding. In Witness whereof, Wee have caused these our Letters to bee made Patent: Witness our Selfe, att Westminster, the three and Twentieth day of April in the Fowerteenth yeare of our Reigne.

By writt of Privy Seale.

HOWARD.

And further to maintain the issues on its part, the plaintiff offered in evidence a certified copy of a deed from the United States to the Governor of the State of Connecticut, a true copy of which is as follows, to-wit:

John Adams, President of the United States of America,

To all who shall see these presents, Greeting:

Whereas the Congress of the United States at their session begun and holden at the City of Philadelphia, in the State of Pennsylvania, on Monday the second of December, One thousand seven hundred and ninety-nine, passed an Act entitle- An Act to Authorize the President of the United States to Accept for the United States a cession of jurisdiction of the Territory West of Pennsylvania commonly called the Western reserve of Connecticut in the words following, to-wit:

Be it Enacted by the Senate and House of Representatives of the United States of America, in Congress Assembled: That the President of the United States be and he hereby is authorized to execute and deliver letters-patent in the name and behalf of the United States to the Governor of the State of Connecticut for the time being, for the use and benefit of the persons holding and claiming under the

State of Connecticut, their heirs and assigns forever, whereby all the right, title, interest and estate of the United States to the soil
 116 of that tract of land lying west of the west line of Pennsylvania as claimed by the State of Pennsylvania, and as the same has been actually settled, ascertained and run in conformity to an agreement between the said State of Pennsylvania and the State of Virginia, and extending from said line westward one hundred and twenty statute miles in length and in breadth throughout the said limits, in length from the completion of the forty-first degree of north latitude until it comes to forty two degrees and two minutes north latitude, including all that territory commonly called the "Western Reserve of Connecticut," and which was excepted by said State of Connecticut out of the cession by the said State heretofore made to the United States, and accepted by a resolution of Congress of the fourteenth of September, one thousand seven hundred and eighty six, shall be released and conveyed as aforesaid, to the said Governor of Connecticut, and his successors in said office forever for the purpose of quieting the grantees and purchasers under said State of Connecticut and confirming their titles to the soil of the said tract of land. Provided however, that such Letters-Patent shall not be executed and delivered unless the State of Connecticut shall, within eight months from passing this Act, by a Legislative act, renounce forever for the use and benefit of the United States and of the several individual states, who may be therein concerned respectively and of all those deriving claims or titles from them or any of them, all territorial and jurisdictional claims whatever under any grant, charter or charters whatever to the soil and jurisdiction of any and all lands whatever lying westward, north westward, and south westward of those counties in the State of Connecticut which are bounded westwardly by the eastern line of the State of New York, as ascertained by agreement between Connecticut and New York in the year one thousand seven hundred and thirty three, excepting only from such renunciation the claim of said State of Connecticut and of those claiming from or under the said State to the soil of said tract of land herein described under the name of the Western Reserve of Connecticut. And Provided Also, That the said State of Connecticut shall, within the said eight months from and after passing this act, by the agent or agents of said State, duly authorized by the Legislature thereof, execute and deliver to the acceptance of the President of the United States, a deed expressly releasing to the United States the jurisdictional claim of the said State of Connecticut to the said tract of land herein described under the name of the Western Reserve of Connecticut, and shall deposit an exemplification of said act of renunciation under the Seal of the
 117 said State of Connecticut together with said deed releasing said jurisdiction in the office of the Department of State of the United States, which deed of cession, when so deposited, shall vest the jurisdiction of said territory in the United States. Provided, that neither this act nor anything contained therein shall be construed so as in any manner to draw into question the conclusive settlement of the dispute between Pennsylvania and Connecticut,

cut, by the decree of the Federal Court at Trenton, nor to impair the right of Pennsylvania or any other State or of any person or persons claiming under that or any other State in any existing dispute concerning the right either of soil or of jurisdiction with the State of Connecticut or with any person or persons claiming under the State of Connecticut, and Provided Also that nothing herein contained shall be construed in any manner to pledge the United States for the extinguishment of the Indian Title to the said lands or further than merely to pass the Title of the United States thereto, and Whereas, the General Assembly of the State of Connecticut, at their session holden at Hartford on the second Thursday of May, one thousand eight hundred, passed the following Act to wit,—At a General Assembly of the State of Connecticut, holden at Hartford on the second Thursday of May A. D., 1800, An Act Renouncing the Claims of this State to certain lands therein mentioned; Whereas the Congress of the United States at their Session, begun and holden in the City of Philadelphia, on the first Monday of December, in the year one thousand seven hundred and ninety-nine, made and passed an Act in the words following, to wit,—An Act to Authorize the President of the United States to accept for the United States a cession of jurisdiction of the territory west of Pennsylvania commonly called the Western Reserve of Connecticut; Be it Enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be and he is hereby authorized to execute and deliver Letters-Patent in the name and behalf of the United States to the Governor of the State of Connecticut for the time being, for the use and benefit of the persons holding and claiming under the State of Connecticut, their heirs and assigns forever, whereby all the right, title, interest and estate of the United States to the soil of that tract of land lying west of the west line of Pennsylvania, as claimed by the State of Pennsylvania, and as the same has been actually settled, ascertained and run in conformity to an agreement between the said State of Pennsylvania and the State of Virginia, and extending from said line westward one hundred and twenty statute miles in length, and in breadth throughout the said limits in length from the
118 completion of the forty first degree of north latitude until it comes to forty two degrees and two minutes north latitude including all that territory commonly called the Western Reserve of Connecticut and which was excepted by said State of Connecticut out of the cession by the said State heretofore made to the United States and accepted by a resolution of Congress of the fourteenth of September, one thousand seven hundred and eighty six, shall be released and conveyed as aforesaid to the said Governor of Connecticut and his successors in said office forever, for the purpose of quieting the grantees and purchasers under said State of Connecticut, and confirming their titles to the soil of the said tract of land, Provided However, that such Letters-Patent shall not be executed and delivered unless the State of Connecticut shall, within eight months from the passing of this Act, by a legislative Act, renounce forever, for the use and benefit of the United States, and of the several indi-

vidual states who may be therein concerned, respectively, and of all those deriving claims or titles from them or any of them, all territorial and jurisdictional claims whatever under any grant, charter or charters whatever to the soil and jurisdiction of any and all lands whatever lying westward, north westward and south westward of those counties in the State of Connecticut which are bounded westwardly by the eastern line of the State of New York as ascertained by agreement between Connecticut and New York in the year one thousand seven hundred and thirty three, excepting only from such renunciation the claim of said State of Connecticut and of those claiming from or under the said State to the soil of the said tract of land therein described under the name of the Western Reserve of Connecticut, and Provided Also, That the said State of Connecticut shall, within the said eight months from and after passing this act by the agent or agents of said State duly authorized by the Legislature thereof, execute and deliver to the acceptance of the President of the United States, a deed expressly releasing to the United States the jurisdictional claim of the said State of Connecticut to the said tract of land herein described under the name of the Western Reserve of Connecticut, and shall deposit an exemplification of said Act of Renunciation under the Seal of the said State of Connecticut, together with said deed releasing said jurisdiction in the office of the Department of State of the United States, which deed of cession when so deposited shall vest the jurisdiction of said territory in the United States, Provided, That neither this Act nor anything contained therein shall be construed so as in any manner to draw into question the conclusive settlement of the dispute between

119 Pennsylvania and Connecticut by the decree of the Federal Court at Trenton, nor to impair the right of Pennsylvania or any other State or of any person or persons claiming under that or under any other State, in any existing dispute concerning the right either of soil or of jurisdiction with the State of Connecticut or with any person or persons claiming under the State of Connecticut, and Provided Also, That nothing herein contained shall be construed in any manner to pledge the United States for the extinguishment of the Indian title to the said lands or further than merely to pass the title of the United States thereto; Therefore, in consideration of the terms and in compliance with the provisions and conditions of the said Act.

Be it enacted by the Governor and Council and House of Representatives in General Court assembled, That the State of Connecticut doth hereby renounce forever, for the use and benefit of the United States and of the several individual states who may be therein concerned respectively and of all those deriving claims or titles from them or any of them all territorial and jurisdictional claims whatever under any grant, charter or charters whatever to the soil and jurisdiction of any and all lands whatever lying westward, north westward and south westward of those counties in the State of Connecticut which are bounded westwardly by the eastern line of the State of New York as ascertained by agreement between Connecticut and New York in the year one thousand seven hundred and thirty

three, excepting only from this renunciation the claim of said State of Connecticut and of those claiming from or under the said State of Connecticut to the soil of said tract of land in said Act of Congress described under the name of the Western Reserve of Connecticut.

And be it further enacted, That the Governor of this State, for the time being, be and is hereby empowered in the name and behalf of this State to execute and deliver to the acceptance of the President of the United States a deed of the form and tenor directed by the said Act of Congress, expressly releasing to the United States the jurisdictional claims of the State of Connecticut to all that territory called the Western Reserve of Connecticut according to the description thereof in said Act of Congress, and in as full and ample a manner as therein is required. And whereas Jonathan Trumbull, Esquire, Governor of the State of Connecticut, in conformity to the before recited Acts on the thirtieth day of May, one thousand eight hundred did execute and deliver to the President of the United States a deed expressly releasing to the United States the jurisdictional claim of the State of Connecticut to the tract of land

120 in the aforesaid Act of Congress described under the name of the Western Reserve of Connecticut, which deed on ninth day of June last passed was accepted by the President of the United States and thereupon the State of Connecticut on the ninth day of June, one thousand eight hundred caused an exemplification of the Act of Renunciation aforesaid, under the Seal of said State, together with the above-mentioned deed releasing said jurisdiction to be deposited in the office of the Department of State of the United States whereby the State of Connecticut has complied with the terms and conditions of the said Act of Congress—

Be it therefore known,—That in consideration of the premises and by virtue of the powers vested in the President of the United States by the before recited Act of Congress and for the purposes therein declared, I, John Adams, President of the United States, in the name and behalf of the United States, have released and conveyed and by these presents do release and convey to Jonathan Trumbull, Esquire, Governor of the State of Connecticut and his successors in said office forever, for the use and benefit of the persons holding and claiming, under the State of Connecticut, their heirs and assigns forever all the right, title interest and estate of the United States to the soil of that tract of land lying west of the west line of Pennsylvania, as claimed by the State of Pennsylvania and as the same has been actually settled ascertained and run in conformity to an agreement between the said State of Pennsylvania and State of Virginia and extending from said line westward one hundred and twenty statute miles in length and in breadth throughout the said limits in length from the completion of the forty first degree in north latitude until it comes to forty two degrees and two minutes north latitude, including all the territory commonly called the Western Reserve of Connecticut, and which was excepted by said State of Connecticut out of the cession by the said State heretofore made to the United States and accepted by a resolution of Congress

of the fourteenth of September, one thousand seven hundred and eighty six. To have and to hold, all the right, title, interest and estate of the United States, in and to the soil of the tract of land before mentioned, and to every part and parcel thereof unto him the said Jonathan Trumbull, Esquire, Governor of said State of Connecticut, and his successors in said office forever for the use and benefit of the respective persons holding and claiming the same under the said State of Connecticut and their heirs and assigns forever.

In testimony whereof, I, John Adams, President of the United States of America, have caused the Seal of the United States to be hereunto affixed, and signed the same with my Hand at the City of Washington this second day of March, in the year of our Lord, one thousand eight hundred and one, and of the independence of the said State, the twenty fifth.

[SEAL.]

JOHN ADAMS.

By the President,

[SEAL.]

J. MARSHALL,
Acting Secretary of State.

STATE OF CONNECTICUT, ss:

Office of the Secretary.

I hereby certify that the foregoing is a true copy of the Patent of the United States of America to the State of Connecticut of the territory commonly called the "Western Reserve of Connecticut."

In testimony whereof, I have hereunto set my hand and affixed the Seal of said State, at Hartford this 23rd day of January, A. D. 1899.

[SEAL.]

HUBER CLARK, *Secretary.*

And further to maintain the issues on its part, the plaintiff offered in evidence Chancery Record No. 3 of the Circuit Court of the United States, for the Northern District of Ohio, beginning at page 1, being certain portions of the Record in the case of Holmes et al. vs. Cleveland, Columbus & Cincinnati Railroad Company et al.

To which the defendants objected; which objection was overruled by the court; to which ruling of the court the defendants then and there severally excepted.

Mr. BAKER: I am offering the bill as preliminary to offering the answers, and the offer, of course, includes the preliminary statement.

Whereupon counsel read from the record offered, as follows:

July Term, 1860.

At a stated term of the Circuit Court of the United States for the northern district of Ohio, in the seventh circuit, begun and held at the City of Cleveland in said district on the second Tuesday of July, being the 10th day of that month in the year of our Lord one thousand eight hundred and sixty, and of the independence of the United States of America the Eighty-fifth.

Present: The Honorable John McLean and Honorable Hiram V. Wilson, Judges of said Court.

122 Among the proceedings then and there had were the following, to wit:

In Chancery.

No. 431.

HENRY HOLMES, JULIUS C. SHELDON and FRANCIS GRANGER

vs.

THE CLEVELAND, COLUMBUS & CINCINNATI RAILROAD COMPANY,
The Cleveland & Pittsburgh Railroad Company, The Cleveland &
Mahoning Railroad Company, The Junction Railroad Company,
David Tod, Daniel P. Rhodes and The Cleveland, Painesville &
Ashtabula Railroad Company and Others.

Seventeenth day of January in the year of our Lord One thousand eight hundred and fifty seven, there was filed in the Clerk's office of said Court an authentication of the order of removal of this cause from the Circuit Court of the United States for the Southern District of Ohio, as follows, to wit:

"At a special and adjourned Term of the Circuit Court of the United States, Seventh Circuit and Southern District of Ohio, begun and held at the City of Cincinnati on the third Tuesday, being the 16th day of December, A. D. 1856, and in the 81st year of the Independence of the United States of America.

Present: The Honorable Humphrey H. Leavitt, Judge of said Court.

Among other proceedings had were the following, to wit: "Henry Holmes et al. vs. The Cleveland, Columbus & Cincinnati R. R. Co., et al., 386: Chancery.

On motion to the Court and upon the filing of the written agreement of counsel thereto, it is ordered that this cause be removed to the Circuit Court of the United States for the Northern District of Ohio, for trial, in pursuance of the Act of Congress, in such case made and provided" Thursday, January 8th, 1857.

THE UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

I, William Miner, Clerk of the Circuit Court of the United States, 7th Circuit and Southern District of Ohio, hereby certify that the foregoing order is truly taken and copied from the Journal of the proceedings of said Court, for the December Term thereof, A. D. 1856.

123 In Witness Whereof I have hereunto set my hand and affixed my official seal, at Cincinnati, this 14th day of January A. D. 1857, and in the 81st year of American Independence.

WM. MINER, *Clerk.* [SEAL.]”

And also on the day and year aforesaid, to wit, on the 17th day of January, A. D. 1857, and accompanying said authentication there were filed in said Clerk's office the following Bill, Precipe, Writ of Subpœna, Answer of the Cleveland, Columbus & Cincinnati Railroad Company, Answer of the Cleveland & Pittsburgh Railroad Company, Joint Answer of The Cleveland & Mahoning and Cleveland & Toledo Railroad Companies, Answer of The Cleveland, Painesville & Ashtabula Railroad Company, and Replication, to wit:

Bill.

“To the Honorable the Judges of the Circuit Court of the United States within and for the District of Ohio:

Your orators, Henry Holmes and Julius C. Sheldon, of lawful age and citizens of the State of Connecticut and Francis Granger, surviving Executor and Trustee of Gideon Granger, de'd, of lawful age and a citizen of the State of New York, humbly complaining represent unto your Honors, that they are owners in equity and tenants in common with divers other persons, a part of whom are known unto your orators and are hereinafter mentioned, and a part are unknown to your Orators and if known are too numerous to mention and who when discovered your Orators pray may be made defendants hereto, and for whose benefit as well as their own your Orators pray leave to file and prosecute their bill on their coming in and contributing their just proportion of the expenses and charges. Your orators represent that they are tenants in common with the defendants hereinafter designated and with others who are unknown and not named herein, of the following described property or real estate in the proportion hereinafter described, to wit, Situate in or adjoining the City of Cleveland, County of Cuyahoga and State of Ohio and also in or adjoining Ohio City, County and State aforesaid bounded northerly by latitude 42° 2 minutes being the Northern boundary of the Western Reserve as specified in the deeds from the State of Connecticut to the original proprietors of said Western Reserve, Westerly by the centre of the Cuyahoga River as it run in 1796 and 1797 and a line running North from the mouth of said River, as it run at that time, to its intersection with the North-

erly line aforesaid, Southerly by the Northerly line of original City lots (commonly called two-acre lots), numbered 191, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 124 23, 24, 186, 187, 188, 189 and 190, as laid out and surveyed by the Connecticut Land Company in 1796 and 1797 to the North East corner of said lot No. 190, a part of said line from Water Street in said City of Cleveland running westerly to the Government Pier so called, being also the Southerly line of Bath or Front Street in said City of Cleveland. The *ten* West of the Cuyahoga River following the centre of the Channel as it run in 1796 to the westerly line aforesaid and being nearly in a line with an extension of the Southerly line of Bath Street aforesaid to Lake Erie and Easterly by a line running northerly from the north east corner of said Lot 190 corresponding with an extension of the east line of said Lot 190 to the north line aforesaid, containing more less. For a more particular description reference is here had to a map or profile of said premises hereto attached as Exhibit A, and made a part of this Bill.

Your Orators further represent that the above described lands are a part and parcel of the purchase made of the State of Connecticut by sundry persons associated together under the name and style of The Connecticut Land Company, by articles of association bearing date September 5th, 1795, and recorded in the books of said Company now in the office of the Secretary of State for the State of Connecticut a copy of which said articles of association are herewith filed as Exhibit B and made part of this Bill and which said lands pursuant to said articles of association were by deed of trust conveyed by the original proprietors of said Company to John Caldwell, Jonathan Brace and John Morgan and to the survivors and survivor of them and heirs of such survivor forever in trust for the proprietors aforesaid and their heirs and assigns by deed dated September 5th, 1795, as appears by a copy of said deed hereto attached as Exhibit C, and made a part of this Bill. Your Orators state that said land is of great value to wit of the value of one million of dollars. That the amount paid by said Connecticut Land Company for the Western Reserve aforesaid was Twelve Hundred thousand dollars. That your orator Henry Holmes as sole heir at law of Uriel Holmes who was a member of said Company owns in equity and is entitled to Thirty-One thousand Twelve hundred thousandths (31,000-1,200,000) of said premises, that said Uriel Holmes (Father to Your Orator Henry) held nineteen thousand dollars by original certificates of stock in said Company and the remaining Twelve thousand by purchase and transfer of Stock from Ephraim Kirby and Elijah Wadsworth as appears by the Stock Ledger of said Company, kept in the City of Hartford in said State of Connecticut.

125 That your Orator Julius C. Sheldon as devisee of Martin Sheldon deceased owns in equity and is entitled to ten thousand three hundred and eighty Twelve hundred thousandths (10,380-1,200,000) of said premises. That said Martin Sheldon

held by purchase of Roger Skinner, Frederick Wolcott and Daniel Austin as appears by the Stock Ledger aforesaid of said Company.

That your Orator Francis Granger and Mendwell J. Granger Executors and Trustees of Gideon Granger, Jr., deceased, owns in equity and is entitled to under the last will and testament of said deceased duly approved &c. and admitted to record in said County of Cuyahoga an undivided interest in common in said premises of Forty three thousand four hundred and eighty-four twelve hundred thousandths (43,484-1,200,000). That said interest was held by said Gideon Granger in his lifetime a part to-wit \$14,900 by original stock in said Company and the remainder by purchase from Andrew Hall, Ebenezer Thomas, Frederick Tracy, John Peck, Daniel Austin, Asher Miller, Oliver Phelps, and others, as appears by the Stock Ledger aforesaid in said company.

They further state that Hetty B. Hart of Hartford, Connecticut and others the heirs at law and assignees of Richard W. Hart, who in his lifetime was a member of said Connecticut Land Company and whose names and residence- are unknown to your Orators are tenants in common with your Orators in said premises and are together entitled as your Orators are informed and believe, to an undivided part equal to Forty-three thousand four hundred and sixty-two, Twelve hundred thousandths (43,462-1,200,000). That James Root and Samuel Root of Hartford, Connecticut, with others, the heirs at law or assignees of Ephraim Root, who in his lifetime was a member of said Connecticut Land Company own an undivided equitable interest in said premises of (52,174-1,200,000).

That Henry I. Canfield of Mahoning County, Ohio and others residing in the State of New York, the heirs at law of Judson Canfield, own an undivided equitable interest in said property of (10,442-1,200,000).

That Frederick A. Boardman of Mahoning County, Ohio, and others the heirs at law and assignees of Elijah Boardman, own an undivided equitable interest in said property of (19,711-1,200,000).

That Jared P. Rutland of Cuyahoga County, Ohio, and others the heirs at law or assignees of Turhand Rutland, deceased, own an undivided equitable interest in said property of (10,000-1,200,000).

126 That the State of Connecticut as the assignee of Pierpont Edward and Asher Miller owns an undivided equitable interest of (39,352-1,200,000-).

That the heirs of Samuel P. Lord late of the State of Connecticut, deceased, or their assigns are entitled to an undivided equitable interest in said property of (18,092-1,200,000).

That Lemuel G. Storrs of Lake County, Ohio, and others the heirs at law of Lemuel Storrs late of the State of Connecticut dec'd. or their assigns are entitled to an undivided equitable interest of (35,297-1,200,000) in said property.

That Aristarchus Champion of New York and others the heirs at law of Henry Champion 2d deceased are entitled to an undivided equitable interest of (42,965-1,200,000) in said property.

That Matthew Birchard of Trumbull County, Ohio, and Orrin Harmon of Portage County, Ohio, hold a large amount of stock of said Land Company, or the interest of a large number of the heirs at law of original stock holders or members of said company by conveyances in trust for the benefit of the owners, to-wit, Two hundred thousand twelve hundred thousandths (200,000-1,200,000).

The remainder of said twelve hundred thousand dollars representing the original purchase money for the Western Reserve is owned by a large number of individuals whose names and residence- are unknown to your Orators and who own undivided interests in said property in proportion to the amount of stock held by their ancestors in said Connecticut Land Company.

Your orators further represent that said Connecticut Land Company pursuant to said Articles of Association proceeded to lay out and survey the said Western Reserve into Townships and Lots and that the said lots were divided at sundry times by drafts among the original proprietors of said Land Company, the trustees aforesaid conveying to said proprietors the specific portions of said Western Reserve so drawn by him, her or them according to the stipulations, powers and terms of said trust deed and said articles of association. That the land hereinbefore described and owned in equity by your Orators and co-tenants in common, remained at the close of said Drafts in 1908 undrawn, undivided and unconveyed, the legal title being in said trustees for the purposes aforesaid, and the equity in the members of said Company their heirs or assigns.

127 And your Orators further aver that said lands never have been divided or apated among the members of said Company or their heirs or assigns. That said Trustees have long since deceased. That John Morgan survived his co-trustees (Brace and Caldwell) That at his death he left Mrs. Glover his sole heir at law who has also deceased, leaving Robert O. Glover, Thomas I. Glover, Agnes Barry (Formerly Glover) intermarried with Garrett R. Barry, William Gudge only child of Martha Gudge deceased (formerly Glover) residing in the city and State of New York and the children of Edward Glover deceased, whose names and residence are unknown to your Orators her heirs at law, descendents of said John Morgan surviving Trustee as aforesaid and in whom by the terms of said trust deed and articles of association the legal title to said land is vested in trust and for the benefit of your Orators and their co cestui que trust unless the same became vested in one Thomas Lloyd as to a part of said premises, who on the 23rd day of March, 1836, induced the said John Caldwell, Jonathan Brace and John Morgan (then in full life) Trustees as aforesaid, in violation of their duty in that behalf, contrary to the terms of said articles of association and said trust deed, without any previous division, sale or direction so to do by or from the Directors of said Connecticut Land Company and without any consideration received on behalf of your Orators and their co cestui que trust by the Directors of said Company or any other person or persons authorized by your Orators and co-tenants the owners in equity of said property, fraudulently to combine with him the said Thomas Lloyd to defraud your

Orators and their co-tenants out of their rights in the premises then and there to execute and deliver to said Thomas Lloyd a quit claim deed for all that portion of said property lying west of a point thirteen rods East of Bank Street in said City of Cleveland to hold to him and his heirs, a copy of which said last mentioned deed is hereunto annexed as Exhibit and made a part of this Bill and which said deed was duly recorded in book 27 pg. 204 of the Records of said Cuyahoga County as were also the articles of association of said Connecticut Land Company and the said Trust Deed to said Caldwell, Brace and Morgan in Book E of Trumbull County Records, said County of Trumbull at the time of the recording aforesaid embraced the now territory of the County of Cuyahoga and the lands in question.

Your Orators further represent and charge that the deed 128 so executed and delivered by said Trustees to said Thomas Lloyd was and is fraudulent. That the trustees aforesaid had no power or authority to convey the title of said land to said Lloyd or make sale of the same in any manner and that the said Thomas Lloyd had full notice of the rights and interests of your Orators and their co-tenants in common, and that if anything was vested in him by virtue of said fraudulent deed it amounted to nothing more than the mere naked title of said premises subject to the trust specified in said articles of association and the deed to said Caldwell, Brace and Morgan, without any power of conveying the same by bargain and sale or grant to a purchaser or stranger and that he had no other right or title, if any, thereto, whatsoever.

Your Orators further represent that said Thomas Lloyd in fraudulently combining with said Trustees and in receiving from them said quit claim deed fraudulently designed to deprive your Orators and their co-tenants of all interest and benefit in said property.

Your Orators further state that said Thomas Lloyd deceased some time in the year 1842 leaving William B. Lloyd resident of the City of New York, A. M. Lloyd, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail Lloyd, and John H. Lloyd whose residence is unknown to your orators his children and heirs at law. That some time after the decease of said Thomas Lloyd, William B. Lloyd aforesaid claimed to hold a written contract for the purchase of said land executed by Thomas Lloyd in his lifetime. That the administrators of said Thomas filed in the Court of Common Pleas within and for said County of Cuyahoga sundry petitions praying for authority to convey said lands to said William B. Lloyd pursuant to said contracts. That by deeds dated June 23, 1845, June 8th, 1846, April 1, 1850 and April 17, 1850, executed in pursuance of said proceedings said administrator undertook to convey to said William B. Lloyd all that portion of said premises embraced in the said quit claim deed from the said Caldwell, Brace and Morgan to his father the said Thomas Lloyd as will appear by said deeds recorded in Book 42 pgs. 773 and 774 and Book 45 pgs. 596 and 597 of said Cuyahoga County Records and by virtue of which said last mentioned deeds the said William B. Lloyd pretended to be seized of the legal title to that part of said premises lying

East of the point aforesaid, but your Orators aver and charge that by virtue thereof no title whatever but the legal title passed to the said William B. Lloyd they charge that the said contracts and conveyances, together with sundry releases from one time to another of the said Lloyd family and a pretended tax title bought by A. M. Lloyd on that portion west of the Cuyahoga River were but a series of devices resorted to by the said Thomas Lloyd and his representatives to cover up and embarrass the title to said premises. They charge that the said William B., A. M., Caroline, Rozella, Delia Ann, Abigail J. and John H. Lloyd had full notice of the trust aforesaid and the beneficial interest of your Orators and their co-tenants in the premises, and if any title vested in said William B. Lloyd by virtue of said contracts and deeds or in the heirs at law of said Thomas Lloyd by descent it was but the naked legal title subject to the trusts aforesaid and that no other title or interest whatever passed to them or either of them.

Your Orators further represent that the Cleveland, Columbus and Cincinnati Railroad Company, the Cleveland & Pittsburgh Railroad Company, The Cleveland & Mahoning Railroad Company, The Cleveland, Painesville & Ashtabula Railroad Company, The Junction Railroad Company, David Tod, Daniel P. Rhodes and J. S. Stockley of Cleveland, Ohio, are in possession of different portions of said land claiming title as your Orators are informed under and by virtue of said quitclaim deed to said Thomas Lloyd and that they hold or pretend to hold the same by contracts or conveyances from said William B. Lloyd and the other heirs at law of said Thomas Lloyd or their assigns through and under said deed of 23rd March, 1836, from said Caldwell, Brace and Morgan hereinbefore set forth.

Your Orators further state that they are informed that one Frederick Harbach in his lifetime pretended to possess and occupy a portion of the said premises described in the Lloyd deed by virtue of a contract or conveyance from said William B. Lloyd, that after his decease his widow and children to wit, Thomas Harbach, Harriet L. Harbach, and Maria L. Harbach, residents of the State of Connecticut conveyed or sold the interest that descended to them to the Cleveland & Pittsburgh Railroad Company, so that the corporations and individuals before named now occupy the whole of said premises lying west of Bank Street aforesaid, claiming title under said Thomas Lloyd and his heirs or their assigns and your Orators aver that each and every of them had full notice of the equity of your Orators and their co-tenants in equity. That each and every of them bought and hold at their own risk with a full knowledge of the facts aforesaid and without any covenants of seizin or title from their grantors or contractors and that if they hold any title whatever under such fraudulent conveyances they hold the same as your Orators claim in trust for them and their co-tenants.

Your Orators further represent that said occupiers and pretended holders of title as aforesaid refuse to recognize the trusts aforesaid or to account in any manner with your Orators.

Your Orators further aver that by setting up a claim of title under the said deed to the said Thomas Lloyd and by virtue of the possession and occupancy which they have acquired from said Thomas in his lifetime and by and through his heirs and vendees since his death under said fraudulent deed a cloud has been thrown over the equity and title of your Orators and their co-tenants in common which ought to be removed. They further represent that William B. Lloyd, said Railroad Companies, Tod and Rhodes and other defendants have received a large amount of rents and profits from said property to-wit, the sum of one hundred thousand dollars, which they refuse to account for to your Orators and their co-tenants.

And your Orators further represent that they are without full adequate and complete remedy save in a court of equity where such matters are properly recognizable. They therefore pray that Your Honors will take their case into consideration.

That the said Hetty B. Hart, James Root, Samuel Root, Henry I. Canfield, Frederick A. Boardman, Jared G. Kirtland, The State of Connecticut, Lemuel G. Stors, Aristarchus Champion, Matthew Birchard, Orrin Harmon, Robert O. Glover, Thomas G. Glover, Agnes Barry, Garrett R. Barry, William Gudge, and the children of Edward Glover deceased whose names and residence- are unknown, the heirs at law of John Morgan late of the State of Connecticut, deceased, William B. Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail G. Lloyd, John H. Lloyd, Thomas Harbach, Harriet L. Harbach, Maria Louisa Harbach, The Cleveland, Columbus & Cincinnati Railroad Company, The Cleveland & Pittsburgh Railroad Company, The Cleveland & Mahoning Railroad Company, The Junction Railroad Company, The Cleveland, Painesville & Ash-tabula Railroad Company, David Tod, and Daniel P. Rhodes may be made parties defendants hereto. That process of subpoena may issue against those residing within the State of Ohio, that non-residents defendants may be brought into court according to the rules and practice of the court, if any there be in relation thereto.

131 That co-tenants with your Orators who are parties defendants answer under oath and set forth the amount or proportion claimed by each and their title to the same. That your Orators may have leave to prosecute this bill on behalf of their co-tenants known and unknown without the necessity of bringing them all into court as well as for themselves and that upon finding the allegations herein true a Master may be directed to ascertain upon proper inquiry the number of co-tenants and the interest or proportion owned by each, to whom your Orators pray such share or proportion may be apated after deducting a proper proportion of expenses. Your Orators further pray that all the other defendants herein named may answer all and singular the allegations of this Bill — not under Oath. That each of the said Railroad Companies and the said Tod and Rhodes set forth specifically the title and claim under which they occupy and pretend to hold said premises or proportions and that they describe and define the portions occupied or claimed by each. That on final hearing your Orators' rights

and as well the rights of their co-tenants in whose behalf this bill is prosecuted, may be ascertained and determined. That said property if the same cannot be divided without manifest injury to the whole may be sold discharged of the trusts aforesaid and the proceeds divided among the several cestuis que trust in proportion to their respective interests after deducting necessary expenses. That guardians ad litem may be appointed for minor defendants. That an account may be taken of the rents and profits received by said defendants in possession and that your Orators may have such other and further relief in the premises as the nature of their case may require and as may be just and right.

Complainants further pray that said deed to Thomas Lloyd from the trustees aforesaid may be held for naught and all conveyances subsequent thereto of pretended titles derived from him. That defendants claiming under his said deed be decreed to release to complainants and their co-tenants or if the court shall be of the opinion that said deed from the trustees passed a legal title to said Lloyd, that said legal title be declared to be a trust in said Lloyd's heirs or vendees, for the benefit of complainants and their co-tenants; that the said cloud may be wholly removed from their title, and for other relief.

MATTHEW BIRCHARD,
MASON & ESTEP,

Complainants' Solicitors.

132 Counsel for plaintiff also offered in evidence the blue print referred to as Exhibit A to said bill, which follows:

MR. BAKER: This blue print may include some land that is on the west side; there is a little portion of Bath street on the west side now.

THE COURT: Does the deed from the Connecticut Land Company to Lloyd cover just the same property, or more?

MR. FOOTE: It covered a little more property, as I recall it.

To which blue print the defendants objected; which objection was overruled by the court; to which ruling of the court the defendants then and there severally excepted.

MR. BAKER: The quit claim deed referred to is in here, and will appear presently. As I recall it, it was a quit claim of all the land that the trustees had that had not been sold; isn't that the fact, Judge Lawrence?

Judge LAWRENCE: I think so.

Whereupon the plaintiff offered in evidence Exhibit B to said bill, the first part of which consists of the Articles of Agreement constituting the Connecticut Land Company, which are already in this record at page 21.

(To which the defendants objected; which objection was overruled by the court; to which ruling of the court the defendants then and there severally excepted.)

Said Exhibit B is as follows:

EXHIBIT B.

"At a meeting of the Connecticut Land Company had by adjournment at the State House in Hartford on the first Tuesday of April, A. D. 1796, William Hart, Esq., Moderator, Ephraim Root, chosen Clerk (amongst other things).

"Voted Oliver Phelps, Moses Cleveland, Isaac Mills, Samuel Hinchley, Henry champion, William Hart, and Uriel Holmes, Esquires, be a committee to take into consideration, that part of the tenth article of the Constitution of the Company which relates to the mode of making partition and to report thereon to this meeting. Voted that Gideon Granger, Jr., Joseph Howland, Joshua Perkins and Robert Brick, Esquires, be added to the committee appointed to take into consideration and make report to this meeting of a mode of making partition of the Western Reserve. Voted, 133 that the report of the committee appointed to take into consideration that part of the tenth article of the constitution of the company relating to the mode of making partition be accepted, and that the same be registered with the votes and proceedings of this meeting and preserved on file with the papers belonging to the Company.

"Test.

EPHRAIM ROOT, *Clerk.*"

The mode of making partition of the Western Reserve, determined upon by the Connecticut Land Company at their meeting held at Hartford by adjournment on the first Tuesday of April, 1796:

Resolved, That after so much of the Western Reserve as is free from Indian claims shall have been surveyed into townships, according to the third article of our Constitution, the Proprietors shall at the meeting of said proprietors, legally warned for that purpose, elect and appoint three or more judicious persons, who, or a majority of them shall be a committee to divide said parts of said Reserve according to its relative value. And for that purpose said committee shall, as soon as may be, go upon the said land and shall view and explore the same and shall then select from the lands which shall not have been previously disposed of by our Directors. Four Townships in said part of said Reserve which they judge to be of the greatest value on account of their situation, natural advantages, &c., which said four Townships shall by said Committee be divided into lots of such size as they shall judge proper, not less than 100 lots in each of said towns, and each and every person or persons entitled to one or more shares of said Reserve (each share being one-four-hundredths part of said Reserve) shall be allowed to draw in the order here after mentioned, by lot for each share by him or them held one or more lot or lots, in said towns as said Committee shall determine. The Committee shall then proceed to make an estimate of the remaining townships as they shall judge

necessary to appropriate for equalizing said townships which townships thus selected shall be next in quality and goodness to the four townships first mentioned, after which they shall ascertain the first remaining township or townships, if there shall be two or more townships of an equal value. They shall then set apart and annex to each township of a value inferior to the township or townships last mentioned, so many acres from some one of the towns selected for the purpose of equalizing as aforesaid as they shall judge necessary to make said township equal in value to the township

134 or townships next in value to the lands selected as aforesaid.

And the townships which shall be selected for the purpose of equalizing as aforesaid shall by said Committee be designated and made known by being numbered and also by being described by their metes and bounds and each and every fractional part of said towns and each of them, shall also be designated and made known by being numbered and also by being described by particular metes and bounds and said Committee shall also accurately state and describe to which particular township of inferior value each particular fractional part of said selected township is annexed, and also the number of acres contained in said fractional part; and said Committee shall cause said fractional parts of equalizing townships to be surveyed and shall also cause said first mentioned four townships to be surveyed and shall describe by number and by metes and bounds each lot in said four townships and shall also ascertain and determine the number of lots in said four townships which shall be drawn for by each share or four hundredth part. And in case it shall happen that said land cannot all be surveyed into townships of sixteen thousand acres, said Committee shall annex to the part or parts of said land which cannot be surveyed into townships of the aforesaid size, so much of the aforesaid townships which shall be set apart to equalize said townships of inferior value, as will render said part or parts which cannot be surveyed as aforesaid equal in value to the best town or towns after said selected towns and said part or parts with the lands annexed to them shall be considered as towns and as such shall be drawn for upon the division of said property; and immediately after completing said valuation and allotment said committee shall deposit with the Clerk of the Company a complete and full report of their doings, which report shall by said Clerk be recorded in the Company's books at full length. And said Clerk upon the reception of said Report shall notify the Directors thereof, who shall immediately call a meeting of the proprietors for the purpose of division, and the business of said meeting shall be specified in the notification thereof. At which meeting said entire townships, together with the lands annexed to them, if any, and said part or parts which could not be conveyed into townships with the lands annexed to them shall be drawn for by lot which drawing shall be by putting the number of each township and also the number of each part which cannot be surveyed into a township into a

135 box, and in presence of said meeting said number shall by said clerk be drawn against the name of each proprietor, arranged in alphabetical order, and when there shall be several who

shall be entitled to one township only, the number shall be drawn against that party's name who stands first in alphabetical order and the lots in said four townships shall be drawn for in the same manner. If there should be any proprietor who shall be entitled to a part of a township or a part of a lot only, whether from the smallness of their interest or otherwise, then and in that case if so many proprietors as shall be entitled to a township or lot shall agree to take a township or lot in common, they shall have a right to draw for a township or lot upon the same principles and in the same manner as is above provided, but if such proprietors shall not agree to draw together for a township or lot, the proprietors at said meeting shall appoint three persons who shall determine what proprietors shall join in drawing a township or lot and said proprietors shall draw accordingly so that all the property shall be drawn by an interest that has a right to a township or lot and in such mode that each proprietor shall have his first proportion of said lands, and in case the proprietors who shall jointly as aforesaid draw any township or lot cannot agree upon actual partition, then the first mentioned committee or others to be appointed for that purpose shall upon application of a major part of said proprietors, at the expense of the company, by going upon the land or otherways as they shall judge proper appoint and set off in severalty to each proprietor of each town or lot his share and proportion in such township lot or tract, aparted as aforesaid having reference to quantity and quality, and when said committee shall have so aparted and set off to each proprietor his share and proportion as aforesaid said committee shall lodge with said clerk a description of each proprietor's share or proportion therein ascertained, which shall be recorded by said clerk. And in case the committee that may (be) elected for the purposes aforesaid or any one or more of them shall neglect or become incapable to perform the business of said appointment, then and in such case the proprietors may at a meeting warned for that purpose elect any one or more new committeemen to serve in the place of such person or persons as may neglect to act or become incapable of acting. Whenever a partition of said lands shall be made as is herein provided and shall be returned to the clerk of the directors, the same shall be by said clerk recorded

136 in the company's books and a list of each proprietor's share which shall be set to him as aforesaid, shall with a true copy of the doings of said committee, be by said clerk transmitted to the trustees appointed by this company. And thereupon said trustees shall be authorized to and shall convey in fee simple to each proprietor his share in severalty according to the constitution of this company, and each proprietor of a township or lot, after the first general division shall have been recorded by said clerk and previous to the division between the proprietors of a town or lot shall have a good right to a conveyance of his part of said land for which purpose said clerk shall transmit to said trustees a copy of said general division. It is further agreed that whenever the Indian claim to the residue of said land shall be extinguished and said land surveyed, a division of that part of said land shall be made upon the principle

and in the manner aforesaid. And the proprietor or proprietors of the excess of three millions of acres of land, if any, (whenever partition of said Reserve is made as aforesaid) shall be entitled to draw for his or their share *or* the land by them respectively owned in the same manner and under the same regulations in every respect as the proprietors of the Land Company shall draw for their land. Provided nevertheless that nothing contained in the foregoing resolutions shall divest any proprietor or proprietors of the rights vested in him or them by the Eleventh article of the Constitution of the Company.

EPHRAIM ROOT, *Clerk.*

Whereupon the plaintiff offered in evidence further from said record in the Holmes case, the following proceedings:

Same objection, ruling and exception.

Precipe.

C. C. U. S., District of Ohio.

HENRY HOLMES and Others
against

THE C., C. and C. R. R. Co. and Others.

Issue sub. for the following defendants: The Cleveland, Columbus and Cincinnati Railroad Company, The Cleveland and Pittsburgh Railroad Company, The Cleveland and Mahoning Railroad Company, The Junction Railroad Company, The Cleveland, Painesville and Ashtabula Railroad Company, David Tod and Daniel P. Rhodes, only.

137 The other defendants in the district will enter an appearance if necessary that they should be made parties in the first instance.

BIRCHARD, MASON AND ESTEP,
Solicitors.

Writ of Subpœna.

UNITED STATES OF AMERICA,
District of Ohio, ss:

To the Marshall of said District, Greeting:

We command you to summon The Cleveland, Columbus & Cincinnati Railroad Company, The Cleveland & Pittsburgh Railroad Company, The Cleveland — Mahoning Railroad Company, The Junction Railroad Company, The Cleveland, Painesville and Ashtabula Railroad Company, David Tod and Daniel P. Rhodes, citizens of and residents in the State of Ohio, if they be found in your bailiwick to be and appear before the Judges of the Circuit Court of the United States for the District of Ohio, aforesaid, at Columbus forthwith to answer a bill in chancery exhibited against them and others

by Henry Holmes and Julius Sheldon, citizens of and resident of the State of Connecticut and Francis Granger, surviving executor and trustee of Gideon Granger, deceased, citizens of and resident in the State of New York, and have then and there this writ.

Witness the Honorable Roger B. Taney, Chief Justice of the United States this 26th day of October, 1853, and in the 78th year of the Independence of the United States of America.

Attest:

WILLIAM MINOR, *Clerk*. [SEAL.]

Indorsed.

I have served this writ upon The Cleveland, C. & C. R. R. Co., and on The Cleveland & Pittsburgh R. R. Co., by personally leaving a true copy with the presidents at their offices; on the C. & M. R. R. Co., and The Cleveland, P. & A. R. R. Co., by — a true copy on each of the secretaries, at the office of the presidents; on the Junction R. R. Co., by leaving a true copy at the office of the president of said company; on the said David Tod by leaving a true copy personally, and on the said Danl. P. Rhodes by leaving a true copy at his residence.

Columbus, November 3, 1853.

Marshal's fees:

Mileage to Cleveland.....	\$8.22
Service on 7.....	14.00
Seven copies.....	1.75
Total	\$23.97

(Signed)

J. W. FITCH,

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U. S. Marshal for the District of Ohio.

And further to maintain the issues on its part, the plaintiff offered from said record in the Holmes case, the answer of the Cleveland, Columbus and Cincinnati Railroad Company.

(To which the defendants objected; which objection was overruled by the court; to which ruling of the court the defendants then and there severally excepted.)

Said answer is as follows:

Circuit Court for the United States for the District of Ohio.

JULIUS C. SHELDON et al.

vs.

THE CLEVELAND, COLUMBUS & CINCINNATI RAILROAD COMPANY
et al.

In Chancery Pending.

The Separate Answer of The Cleveland, Columbus & Cincinnati Railroad Company, One of the Defendants, to the Bill of Complaint of Henry Holmes, Julius C. Sheldon, and Francis Granger, Complainants.

This defendant reserving to itself all right of exception to said bill of complaint, for answer thereto, or unto so much or such parts thereof, as it is advised is, or are material for it to make answer unto says: It denies that complainants are owners in equity, or tenants in common with any person or persons known or unknown, of the premises described in complainants' said bill of complaint, or that complainants or any or either of them, have or has any interest or title whatever either legal or equitable, as tenants in common or otherwise, in said premises or any part thereof, as alleged in said bill of complaint; and this defendant further answering says, that the greatest part of the territory described in said bill of complaint is situated in Lake Erie, and below low water mark in said lake and entirely covered by the navigable waters thereof and that said lake is situate between the United States and the Colonial possessions of Great Britain and is a great public highway, navigable and navigated by foreign and domestic ships of all burdens, and has been ever since the government of the United States existed and prior thereto and still is extensively used by the public for the

139 purposes of the foreign and domestic trade and commerce of the country and is essential and indispensable to the carrying on of such trade and commerce. This defendant, however, admits that so much of the territory described in said bill of complaint, as in the year A. D. 1795, lay southerly of low water mark in Lake Erie was part and parcel of the purchase made in the year 1795 of the State of Connecticut by a company of persons called the "Connecticut Land Company" associated together by articles of agreement and association bearing date on or about the 5th day of September, A. D. 1795, and was conveyed by the original proprietors of said company to John Caldwell, Jonathan Brace and John Morgan and to the survivors or survivor of them and the heirs of such survivor forever in trust for the proprietors of said Land Company and their heirs and assigns by deed dated on or about the 5th day of September, A. D. 1795. But the defendant denies that the title to so much of the territory described in said Bill of Complaint as in the year 1795 lay northerly of low water mark in said Lake Erie and covered by its waters was ever at any

time vested in the said State of Connecticut, or that such part of said territory was in the year 1795, or in any other time, either before or since, purchased by said Connecticut Land Company of said State, or conveyed, or intended to be conveyed by said State of Connecticut to said Company or that said State could, had it intended so to do, have conveyed to said Land Company any title whatever to such part of said territory. To the contrary thereof this defendant says, that *by* the purchase made by said Land Company of said State, was a purchase of land admitting of actual occupation as such and not a purchase of the waters of Lake Erie, or of land covered by the navigable waters of said lake; that the title to and control of so much of said territory as in the year 1795 lay northerly of low water mark in said lake and covered by its waters, were, when said Land Company purchased the Western Reserve, and received a conveyance thereof from the said State of Connecticut, vested in the government of the United States, in trust, and not otherwise for the sole use and benefit of the public, and had been so vested from the establishment of said government and that said government has never, at any time, ceded to, or otherwise vested in said State of Connecticut or in said Land Company or their heirs or assigns such title, or control.

140 And this defendant further answering admits, that the lands described in said bill of complaint, are of great value, and that the amount paid to the said State of Connecticut by said Land Company for the Western Reserve was twelve hundred thousand dollars, as alleged in said bill of complaint. But whether Exhibits "B" and "C" respectively are, or not true copies of said "Articles of Association" and "Trust Deed," this defendant is wholly ignorant and calls upon complainant for proof of the same. But this defendant denies that the exhibit filed by said complainants with said bill and marked "A" gives a true description of the premises described in said bill or that the same is a true representation of the survey of that portion of the City of Cleveland, as made by the order or under the direction of said Connecticut Land Company. This defendant admits, however, that the original lines of the lots marked on said exhibit are correctly drawn so as to meet the waters of said lake, but it denies that in the original survey of said city there was any other northerly line of Bath street, either drawn on the map or run in the survey, than the water line of said lake. It also denies that the northerly boundary of said two-acre lots adjoining the lake was the bank, or that it was along the red line drawn on said exhibit as thereon stated, but it charges that the only northerly line or boundary, either drawn on the original map or run in such survey, was the water line of said lake. It also denies that the space indicated on said exhibit as lying northerly of a line thereon drawn through Bath street, was at the time said survey was made, or that it was at the commencement of this suit, or is now laid out into sixteen — and that the same are all improved, as it is stated on said exhibit, or that the same is laid out into any number of lots, or otherwise occupied than as herein stated. And this defendant further answering says that it does not

know and has never been informed save by the said complainants' bill and cannot set forth as to its belief or otherwise whether the Uriel Holmes alleged in said bill to be the father of said complainant Henry Holmes, was, or not, at any time a member of said Connecticut Land Company, nor whether said Uriel ever had, or not, any interest whatever in the purchase made as aforesaid of said State of Connecticut, nor whether complainant Henry Holmes is, or not, an heir at law, or sole heir at law of said Uriel, nor whether

141 Martin Sheldon mentioned in said bill, ever had, or not, any interest whatever by purchase, or otherwise, in said Land Company, or in the purchase made of said State as aforesaid, nor whether Julius C. Sheldon is devisee, or not, of said Martin, nor whether Gideon Granger named in said bill ever had or not any interest whatever as original proprietor or otherwise in said Land Company, or in the purchase made by said company of said State; nor whether the complainant Francis Granger is, or not, the surviving executor and trustee of said Gideon. But this defendant denies that the complainants Henry Holmes, Julius C. Sheldon and Francis Granger, or any, or either of them, as tenants in common, or otherwise, ever had, or now have, or has any interest or title whatever, whether acquired by purchase or otherwise, in or to the lands described in said bill of complaint.

And this defendant further answering denies that Hettie B. Hart, of Hartford, Connecticut, or others as his heirs-at-law or assigns of Richard W. Hart, or that James Root and Samuel Root of said Hartford, or either of them, or others as heirs-at-law, or assigns of Ephraim Root; or that Henry J. Canfield, of Mahoning county, Ohio, or any other person or persons as heirs-at-law of Judson Canfield, or that Frederick A. Boardman of said Mahoning county, or any other person or persons as heirs-at-law of Elijah Boardman, or that Jared P. Kirtland of Cuyahoga county, Ohio, or any other persons or persons as heirs-at-law or assigns of Turhand Kirtland or that said State of Connecticut as assignee of Pierpont Edwards and Ashur Miller, or either of them, or that the heirs of Samuel P. Lord, or any or either of them, or their assigns, or the assignee or assignees of any of either of them, or that Samuel G. Storrs of Lake county, Ohio, or any other person or persons, heirs-at-law of Samuel Storrs late of Connecticut or their assigns, or the assignee or assigns of any, or either of them; or that Aristarchus Champion of the State of New York, or any other person or persons, the heirs at law of Henry Champion; or that Matthew Richard of Trumbull county, Ohio, and Orrin Harmon of Portage county, Ohio, or either of them, as assignee, trustee or otherwise ever had or now have or has any title whatever, as tenants in common or otherwise, in or to the premises described in said bill or in any part thereof.

And this defendant further answering says: That it has been informed and believes the same to be true, and avers the fact so to be, that the articles of association of said Connecticut Land
 142 Company contemplated and specially provided and required that all the lands purchased as aforesaid of said State of

Connecticut and conveyed by said State to the proprietors of said company, should be surveyed and laid out into townships and lots and distributed among such proprietors and otherwise disposed of, and that such was the great purpose of said articles. That said Land Company did subsequently to their purchase and in pursuance of their said articles of association proceed to survey and lay out all the lands so purchased of said State into townships and lots, and the greater part of such lots and lands were from time to time prior to the year A. D. 1809, distributed by drafts amongst the original proprietors of said company, and otherwise disposed of, and conveyances of the same were executed by the trustees of said company to the parties entitled thereto; that the last meeting ever held by said company was held at Hartford, in the State of Connecticut, in the month of January, A. D. 1809, at which meeting, with the view of then fully carrying into execution the provisions of said articles of association, and bringing to a final close the affairs of said company and of dissolving said association, said company, amongst others adopted a resolution in substance as follows, to-wit: "That the company devised in severalty all their property consisting of notes, contracts, book debts and lands, by classing the interest of the company into 46 classes and dividing the property of the company as equally as may be into the same number of parts to be drawn for by each class by lot, which drafts shall vest the property in each class which shall draw the same, and be conclusive on the proprietors of each and every class, and no other allowance shall be claimed on account of any errors that may have happened in the cast measure, or otherwise, but said division shall be final unless further property belonging to the company be discovered, and each and every person drawing land, or a contract for the sale of land, shall be at the cost of conveying the same, except the signing of the deed of the trustees," which resolution was then and there by said company fully carried into execution by a distribution of all the then remaining lands and property of said company amongst the proprietors of the same, as in and by the record of the proceedings of said meeting will fully and at large appear and to which for greater certainty this defendant craves leave to refer and make part of its answer; and thereupon said company having fully accomplished the purposes of the association, closed its business, dissolved the association and adjourned without day. And this defendant avers that the final disposition thus made by said company of all its affairs and property has from thence to the filing of complainants' bill, a period of forty years and upward, remained wholly undisturbed and unquestioned, nor have the proprietors of said company, their heirs or assigns, ever, at any time prior to the filing of said bill, claimed or pretended that all the lands then belonging to the said company were not then and there fully distributed and disposed of, and this defendant avers that none has since been discovered.

And this defendant further answering admits, that for the reasons hereinbefore mentioned as well as hereinafter mentioned, the lands described in said bill of complaint were never drawn for, or other-

wise aparted amongst the members of said company. But this defendant denies that either the legal or equitable title to such lands or any part thereof, was in the year A. D. 1809, or at any time since, or is now in the trustees of said Land Company, or any, or either of them or their heirs, or assigns, or the heirs or assigns of any or either of them as alleged in said bill of complaint. And this defendant further answering says, that it has been informed and believes the same to be true as alleged in said bill of complaint, that the trustees of said company are deceased, and that John Morgan survived his co-trustees; but whether said Morgan at his decease did, or not, leave one Mrs. Glover his sole heir-at-law, or whether said Morgan did, or not, at his decease leave any heirs-at-law, or whether the persons named in said bill as the children and grandchildren of Mrs. Glover, are, or not, the descendants, or the heirs-at-law of said Morgan, or whether they or any of them do, or not, reside in the said State of New York, this defendant is wholly ignorant and calls upon complainants to make proof of the same. This defendant moreover denies, if the said Morgan did decease leaving heirs-at-law and the persons or any or either of them named in said bill of complaint are in fact his descendants and heirs-at-law, that the legal title to the lands described in said bill, ever in any manner, vested, or is now vested in trust, or otherwise in such heirs-at-law, or that such heirs-at-law or any or either of them ever had or now have, or has, any interest whatever in the same or in any part thereof.

And this defendant further answering says it has been informed and believes the same to be true as alleged in said bill of complaint that said Caldwell, Brace and Morgan assuming to act
144 in the capacity of trustees of said Land Company which had closed its business and in fact dissolved as aforesaid more than 25 years prior thereto, did on or about the 23rd day of March, A. D. 1836, execute in form to Thomas Lloyd a quit claim deed purporting to convey to him the legal interest which they might then have, as trustee of said Land Company in a small portion of the lands described in said bill, and that they executed said quit claim without any previous division or sale of the lands therein described by the directors of said company and without the direction of said directors. But this defendant denies that they executed the same without any consideration; to the contrary thereof this defendant has been informed and believes the same to be true, that said Lloyd paid to said trustees the sum of \$900.00 or thereabouts, as a consideration for the execution of said deed, but whether said trustees did, or did not, appropriate to their own use such consideration and not account for the same to the members of said company then surviving and to the heirs or assigns of such as had then deceased, or whether said deed was or not, executed in pursuance of a fraudulent combination entered into between said trustees and said Lloyd to cheat and defraud, the defendant is wholly ignorant. But this defendant denies that said Lloyd in procuring said deed intended to defraud complainants or their pretended co-tenants; that Exhibit "D" attached to said bill of complaint is a copy of said quit claim deed, and that the same is recorded in Book 27, page 204, of the

Record of said Cuyahoga county. And this defendant further answering says it has been informed and believes the same to be true, as alleged in said bill of complaint, that said Thomas Lloyd deceased in the year 1842, leaving the several persons named in said bill his children and heirs-at-law; that the administrators of said Lloyd subsequent to his decease, in pursuance of some orders or pretended orders of the Court of Common Pleas of the said county of Cuyahoga, executed, in form, to William B. Lloyd, conveyances of the land described in the quit claim deed of said trustees; that such conveyances are recorded in the Record Books of said Cuyahoga county and that said William B. Lloyd after the execution of said conveyances claimed by virtue thereof to be seized of the legal title of the lands therein described. And this defendant further answering says that for the purposes and in the manner hereinafter stated and under a legal authority so to do, derived from the source and

145 in the manner hereinafter set forth and not otherwise, this defendant is in the joint occupancy with said Cleveland, Painesville & Ashtabula Railroad Company, or so much of the premises mentioned in said bill and embraced between the westerly line of Water street extended on the east, the said Government pier on the west, the northerly line of the premises in said bill mentioned on the north, and the line drawn parallel with, and 132 feet northerly from the said northerly line of original lot No. 191, on the south, as on the diagram hereto attached as Exhibit "A," and made a part of this answer is colored a straw color, together with the tracks thereon indicated by a red line, which diagram this defendant avers is a true representation showing the lands embraced in said Bath street at the time this defendant took possession of the same, and lying southerly of low water mark; the water line, or low water mark in said lake at the time possession was so taken, the piling and planking that has since been done by it, the said Cleveland, Painesville & Ashtabula Railroad Company, and the Cleveland & Pittsburgh Railroad Company northerly of said water line *northerly of said water line* and the structures which have, by them respectively been erected on the same as extended by such piling and planking. And this defendant further answering says, that so much of said premises as lies northerly of said low water mark line, neither the said Connecticut Land Company nor said trustees nor their heirs or assigns nor the assigns of any or either of them, ever had, or now have, or has, any title whatever, and that the title to the same both legal and equitable, and the sole control thereof have at all times been and still are in said city of Cleveland or the public for the sole use and benefit of the public. And this defendant further answering denies that it occupies or claims to occupy the aforesaid parcels, through or under, in any manner, the said William B. Lloyd, or his assigns or the other heirs-at-law of said Thomas Lloyd or their assigns or said Thomas Lloyd himself, or under, or by virtue of the quit claim deed to said Thomas from said trustees, or that this defendant now holds, or ever held, any title or interest whatever in said parcel of land, in trust for complainants, or any or either of them, or that this defendant has received a large amount of rents

and issues from said land, as alleged in said bill of complaint. But this defendant admits that it does now refuse and has at all times hitherto refused to recognize said complainants as having any legal or equitable title whatever in said parcels or either of them, and that it has, at all times refused and still does refuse to account in any manner to complainants for the use of said parcels or either of them. And this defendant further answering says, that so early as the year 1796 the said Connecticut Land Company being desirous of founding a city on the Western Reserve at the mouth of said Cuyahoga river and on the easterly side thereof, caused the northwesterly portion of the lands upon which the said City of Cleveland is now situated by Seth Pease and Augustus Porter, surveyors of said company and authorized agents thereof for such purpose, to be surveyed and laid off into town lots, streets, lanes and public grounds, and the town so surveyed and laid out to be named "The City of Cleveland," and a map or plat thereof, and minutes of such survey to be made by said Pease and Porter (commonly called the map of Pease and Porter) particularly setting forth the lots, streets, lanes and public grounds, and describing the same by courses, boundaries and extent, a copy of which map, and minutes is hereto attached marked "B" and made a part of this answer; that upon said map, said company caused the lots so laid off to be numbered progressively from 1 to 220 inclusive, and all the lands described in said bill of complaint, lying west of the west line of Water street and north of the north line of lot 191 and of the said Cuyahoga river and south of the waters of Lake Erie as indicated on said map to be laid off as public ground and designated as Bath street (the same having no other northerly boundary than the waters of said lake) said company intending thereby to give, and in fact giving thereby and dedicating to the public all the lands so designated upon said map, as Bath street, for the purposes of a public street or way, communicating with the navigable waters of said Lake Erie and said river. And for such other commercial purposes as the commerce and well being of the future inhabitants of said City of Cleveland might require a public ground situate as Bath street was and is in reference to said lake and river to be used. That in the year A. D. 1801, said Connecticut Land Company by one Amos Spafford, a surveyor and authorized agent of said company for such purposes, caused the streets, lanes and public grounds of the said City of Cleveland, surveyed and platted as aforesaid in 1796 and '7 to be resurveyed and minutes thereof to be retaken and a second plat to be made of the lots, streets, lanes and public grounds in said city (which was and is substantially a copy of the

147 aforesaid map of Pease and Porter) commonly called the plat and minutes of Amos Spafford of the City of Cleveland, a copy of which plat and minutes is hereto attached, marked "C," and made part of this answer. And that upon said last mentioned plat (as upon the plat of said Pease and Porter) said company again caused all the lands lying west of the west line of said Water street and north of the north line of said lot No. 191 and the Cuyahoga river and south of the waters of Lake Erie to be designated as

"Bath street." Thereby affirming the decision and appropriation of the same made as aforesaid in the year 1796 to the public for the purposes aforesaid. And this defendant further answering says that said Connecticut Land Company have allotted and platted the said City of Cleveland as aforesaid, as aforesaid proceed to sell the lots designated in said plats in reference thereto and long since sold out and otherwise disposed of all the lots in said plats and ceased to have any interest therein; that the trustees of said company long since executed conveyances of the same to the purchasers thereof, distinctly recognizing the existence and validity of the survey and plat of said Spafford in their conveyances of the lots contiguous to said Bath street; that the purchasers of said lots took possession of the same and made valuable improvements thereon in reference to said plat and said Bath street, and they and their assigns have ever since, for a period of more than half a century occupied and improved said lots, and still do occupy and enjoy the same in reference to said map, and that from the making of the said Spafford map, as aforesaid, until the present time said Land Company and their assigns, so long as they continue to have any interest in the said lands embraced in said plat and the inhabitants of said City of Cleveland, have at all times recognized and still do recognize the plats of said Spafford and Pease and Porter as controlling evidence of the boundary of lots, streets, lanes and public grounds, designated therein. And this defendant answering says, that in obedience to the requirements of an act of the Legislature of the territory northwest of the Ohio passed December 6, 1800, entitled "An act to provide for the recording of plats, etc.," to be found in Volume 7, Chase's Ohio Statutes, Chapter 130, page 291, and which is made a part of this answer, said Land Company caused the map and minutes of said Spafford, as it had before caused those of said Pease and Porter, to be deposited in the office of Pease and Porter to be deposited in the office of the Recorder, of the said county of Trumbull (in which county the lands described in said plat were then situate) for record and the same as this defendant has been informed and believes to be true, were, on or about the 15th day of February, A. D. 1802, duly recorded by the Recorder of said County although the record of said map has long since been accidentally lost, or destroyed, and cannot be found. And this defendant further answering says, that as early as the year A. D. 1800, said Bath street as delineated on the plat of said Spafford having for its northern boundary the waters of Lake Erie as aforesaid, with the full knowledge and consent of said Land Company was opened, occupied and traveled as a public street or way and from thence hitherto with the full knowledge and uninterrupted acquiescence of said company, the trustees thereof and their respective heirs and assigns, it has been at all times regarded, used and occupied by the inhabitants of said City of Cleveland and the public generally without molestation, not only as a public way in said city communicating with said lake and river but also (and of late years extensively so) as a quay or public landing for persons and property transported and to be transported upon the waters of Lake Erie and still is so

regarded, used and occupied by the inhabitants of said city. And that for more than a quarter of a century prior to the year 1827 when the channel of the said river, as laid down on the map of said Spafford was changed to its present location by the United States Government, said Bath street was the only public way used, or which could be used, by the inhabitants of said city and public for the transportation of persons or property, by vehicles of any description to or from said lake or river. And this defendant further answering says; that by an act of the General Assembly of the State of Ohio entitled "An act to incorporate the village of Cleveland in the county of Cuyahoga," passed December 23, A. D. 1814, and is to be found in Volume 13, page 17 of the laws of said State, and which is made part of this answer, so much of the plat of said Spafford as lies northerly of Huron street was erected into a village corporate to be known by the name of "The Village of Cleveland" and the corporation thus created, invested with the powers therein mentioned, which corporation continued to exist until superseded as hereinafter stated. That by another of the same General Assembly entitled "An act to incorporate the City of Cleveland in the county of Cuyahoga," passed March A. D. 1836, and to be found in Volume 34, page 271, of the Local Laws of said State and which is also made a part of this answer, all the lands embraced in 149 the plat by said Spafford lying eastwardly of the present channel of the Cuyahoga river, together with additional territory was declared to be a city and the inhabitants thereof created a body corporate and politic by the name and style of the "City of Cleveland" and invested with such powers and trusts touching the streets, alleys, public grounds and harbor within the corporate limits thereof, as are specified in said act, which powers and trusts have from thence hitherto been and still are exercised and executed by said corporation, and that said Bath street at all times since the passage of said acts of incorporation respectively, with the knowledge and acquiescence of said Land Company, its trustees and their respective heirs and assigns, has been claimed, regarded, controlled and regulated by the inhabitants and corporate authorities of said village and city as one of the streets and public grounds thereof and still is so claimed, regarded and governed by the corporate authorities of said City of Cleveland, and the use of the same as such has never been in any wise vacated, or abandoned by said city or its inhabitants; and this defendant answers that the reason of the premises aforesaid, said Bath street is in fact one of the public streets and grounds of said city.

Whereupon the defendants objected to the paragraph of said answer following the part last above read; which objection was sustained by the court; to which ruling of the court the plaintiff then and there excepted, and by way of its offer to prove sets out the part of said answer so excluded, as follows:

"That the legal title thereof, as this defendant is advised by counsel learned in the law is now vested either in the said city of Cleveland or the public, in trust for the uses and purposes intended as aforesaid by said Connecticut Land Company in dedicating the

same as aforesaid to the public, and that the public has the right to use the same for such purposes without molestation from complainants."

Counsel for plaintiff thereupon continued the reading of said answer after the portion above excluded, as follows:

And this defendant further answering says, that after the channel of the Cuyahoga river, as delineated on the plat of said Spafford was changed to its present location as aforesaid, the government of the United States on the easterly thereof at its mouth (to render said river accessible to water craft navigating Lake Erie) constructed permanent improvements extending into said lake more than a quarter of a mile from the northerly or water line of said Bath street as it was when said channel was changed. That by reason of said improvements and lesser ones made by the inhabitants and corporate authorities of said city at great expense, the encroachment of said lake upon said Bath street, which at times had threatened wholly to submerge the easterly portion thereof at and in the vicinity of said Water street, and render the same useless for the purposes to which it was dedicated as aforesaid, have been stopped and that part of said Bath street, easterly of, at and in the vicinity of the east pier of said river has been increased in width by slow and imperceptible alluvial formations, so that the greater portion of the land embraced between the southerly line of said Bath street and said water line or low water mark, as the same was when this defendant took possession of said premises have been formed by accretions and lies northerly of the water line of said street, as it was when said channel was changed, and that notwithstanding said Bath street has increased in width, the rapid growth of the said City of Cleveland and the incessant and increasing wants of its commerce and of its inhabitants more than keep pace with the increase of said street, and imperatively require every part and parcel thereof, enlarged as it is, to be used for the commercial purposes to which it was devoted, as aforesaid, by the original proprietors of said Western Reserve, and will ever require the same however much it may be enlarged by the means aforesaid to be thus used and appropriated. And this defendant further answering says, that it is a body politic and corporate, duly organized under and created by an act of the Legislature of the State of Ohio passed March 14, 1836, entitled, "An act to incorporate the Cleveland, Columbus & Cincinnati Railroad Company," and under and by virtue of another act of said Legislature passed March 12, 1845, entitled, "An act to revive the act entitled 'An act to incorporate the Cleveland, Columbus & Cincinnati Railroad Company,'" and under and by virtue of the several acts of said Legislature amendatory and supplementary thereto, and under and by virtue of certain sections of the act of said Legislature, passed February 11, 1848, entitled, "An act regulating Railroad Companies, especially the 11th section of the last named act, which sections were duly adopted by this defendant as a part of its charter on the 20th day of May, 1848, all which acts and parts of acts are made part of this answer. And this defendant further avers that

it has been such body politic and corporate for more than six years last past, and that under and by virtue of the power conferred upon it by said acts and parts of acts this defendant has constructed and is now successfully operating a railroad extending from the grounds so in its occupation in said Bath street in the city of Cleveland to the city of Columbus in the county of Franklin in said State to the great advantage of the public at large, and especially of the inhabitants of the said city of Cleveland. And to fully secure to the public the benefits contemplated in the charter of this defendant in the working of said railway it being necessary to connect the same with the waters of said lake and river within the limits of said Bath Street for the delivery of freight and passengers and the exchange of freight and passengers with other roads, and with water craft navigating said lake and river, and the same being also a suitable place for the terminus of said railway within said city, this defendant, under a license obtained from said city of Cleveland on the 13th day of September, 1849, has laid down in a proper manner and not otherwise its railway tracks upon said Bath Street as shown in said diagram and in such manner as to connect its said railway with the waters of said lake and river, and this defendant is now, and for some time past has been running its railway carriages in connection with said Cleveland, Painesville and Ashtabula Railroad Company upon the tracks so laid down to and from said river and lake for the purposes aforesaid in a prudent manner at reasonable times and so as to work no inconvenience to other legitimate uses of said street. And this defendant further answering says, that to make said exchanges with a due regard to the safety of persons and property it was indisputably necessary to provide suitable railway fixtures and improvements upon some part of said Bath Street, and that for such purpose and for such purpose only, this defendant with the consent of said City of Cleveland and in conjunction with said Cleveland, Painesville & Ashtabula Railroad Company, has also constructed and is now using and maintaining in a reasonable manner the structures for depots, engine-houses and other railway fixtures indicated on said diagram as in the joint possession of this and the last named company which are all which are necessary to the convenient management of its said road. And this defendant further answering says, that the harbor accommodation afforded by said river being inadequate to the commercial wants of the inhabitants of the said city of Cleveland, and the channel of said river contiguous to said Bath Street being also too small and otherwise insufficient to admit of the safe and convenient ingress and egress to and from the same of the largest class of water craft navigating said lake to effect conveniently and safely exchanges of passengers and freight with such craft, it was necessary for this defendant, and the said Cleveland, Painesville & Ashtabula Railroad Company to connect in a suitable manner, and to a depth of water sufficient for the safe approach thereto of such craft, a wharf upon that portion of the premises embraced in said diagram and lying northerly of the water line or low water mark between said Bath Street and said lake, and

thereon shown to be in the joint possession of this and the last named company, and in connection with said last named company it has constructed such wharf and laid down thereon the tracks, and erected the other structures shown on said diagram; and this defendant in connection with said Cleveland, Painesville & Ashtabula Railroad Company is now, and for same time past has been, for the purpose of making such exchanges working in a prudent manner, and without inconvenience to the public, its railway carriages upon said track. And this defendant when necessary so to do, has also used portions of said wharf, as a place of temporary deposit for property awaiting transportation. And this defendant submits and insists that it has the right as a component part of the public to occupy with the consent of said city, said Bath Street in the manner and for the purposes aforesaid; that such are a great public accommodation and not incompatible with the purposes intended by said Connecticut Land Company in dedicating the same to the public as aforesaid, but consistent therewith, and that the City of Cleveland in permitting this defendant thus to use a limited portion of said street, and thereby distributing its legitimate use so as to best subserve the convenience and business interests of its inhabitants and the rest of the public has committed no breach of trust, nor violated any public or private right, but performed rather a duty which it owed as well to the forecast of said Land Company as to the public. And this defendant further answering submits if it is mistaken in the opinion hereinbefore expressed that the legal title of said Bath Street is now vested in said City of Cleveland, or in the public in trust for the inhabitants of said city and the same is in fact held by said Lloyd or his assigns or the heirs of the survivors of said Trustees, that the parties, who hold the same whoever they may be, have no beneficial interest in said street, and hold the legal title thereof in trust merely for the uses and purposes intended by said Land Company in dedicating the same to the public as aforesaid and ought not to be permitted in a court of equity to

153 disturb or molest this defendant or the rest of the public in the legitimate use of the same. And this defendant further answering insists also inasmuch as the pretended equitable right of complainants set up in said bill to said Bath Street, if originally well founded, accrued to complainants or those through whom they claim title in the year 1795 and more than 50 years have elapsed since such equitable rights fully ripened and ought to have been asserted against city, and its inhabitants have as aforesaid, used and occupied without molestation, claiming the right so to do, said Bath Street as hereinbefore mentioned with the full knowledge of complainants and those through whom they claim title, and inasmuch as said city has expended large sums of money in improving said Bath Street for the public accommodation and private property contiguous to, and in the vicinity of said street, has improved and occupied in reference thereto under the bona fide belief induced by the silence and acquiescence of complainants and those — whom they claim title, and that the same was public property for the purposes aforesaid inasmuch as the withdrawal of said

street from public use at this late day would materially affect the public accommodation and work irreparable injury to private rights, that complainants and those through whom they claim, have slept too long upon their alleged rights in said Bath Street and have been guilty of too gross laches to be entitled in a court of equity to any relief whatever in the premises. And this defendant respectfully asks the same benefit of the lapse of time in its defense on the hearing of this cause, as if it had plead the same specially in bar of the relief prayed for in said Bill of Complaint. And this defendant having fully answered said complainants' bill prays to be hence dismissed with its reasonable costs in this behalf most wrongfully sustained.

S. I. ANDREWS AND
BISHOP, BACKUS & NOBLE,
Def't's Solicitors.

In testimony whereof H. B. Payne, president of said Cleveland, Columbus & Cincinnati Railroad Company has hereunto affixed his signature and the seal of said company, this 15th day of June, A. D. 1854.

H. B. PAYNE, *President.* [SEAL.]

Counsel for plaintiff also offered in evidence, in connection with said answer, the Record of Proceedings of the meeting of the Connecticut Land Company held in month of January, 1809, referred to in said answer, which is in the words and figures following, to wit:

154 "At a meeting of the 'Connecticut Land Company' held by adjournment at the State House in Hartford on the first Wednesday of January, 1809, being the fourth day of month—Jonathan Brace, Esq., Chairman.

The meeting opened according to adjournment.

The report of the Committee appointed to audit the accounts of the Directors accompanied with their statement was read and,

Voted, that the same be re-committed to the said committee who are authorized to audit the further account of the Directors to the present time and make a report to this meeting.

Voted, that the company divide in severalty all their property, consisting of notes, contracts, book debts and land by classing the Interest of the Company into Forty-six classes and dividing the property of the Company as equally as may be into the same number of parts to be drawn for by each class by lot, which draft shall vest the property in each class which shall draw the same and be conclusive on the Proprietors of each and every class. And no after allowance shall be claimed on account of any errors that may have happened in cast, measure or otherwise, but said division shall be final unless further property belonging to the company be discovered and each and every person drawing land or a contract for the sale of land shall be at the cost of conveying the same except the signing of deeds by the trustees.

Voted, that Henry Champion, Turhand Kirtland, Daniel L.

Coit, and Uriel Holmes, Jun'r, Esquires, be a Committee to divide the property of the Company into 46 parts as equally as may be and report to this meeting.

Voted, that whoever may draw the debt against Oliver Phelps, Esq'r, and also the debt against Joshua Storr have liberty to exchange the same with said Phelps and said Storr to the amount thereof in their several and respective drafts.

Voted, that Ephraim Root, Wm. Ely and Jno. Kinsman, Esqrs. be a Committee to class the proprietors according to their respective interest into Forty-six drafts in order to divide the property of the Company consisting of notes, contracts of land, book debts and land and make Report.

Voted, that this meeting be adjourned to ten tomorrow morning, January 5th.

The meeting opened according to adjournment and Enoch Perkins, Esq. was chosen chairman of this meeting in place of Jonathan Brace, Esq. The Committee appointed to audit the accounts of the Directors to the present time made two several Reports, and

Voted, that said reports be accepted and approved and kept on file.

The Committee appointed to divide the Company's property consisting of notes, contracts for land, book debts, and
155 land in the Forty-six parts, made report which report was accepted and approved. The Committee appointed to class the proprietors according to their respective interest into Forty-six drafts in order to divide the property of the company made report, which report was accepted and approved, and

Voted, that the Company now proceed to make division of their property conformable to said Reports and the mode of partitions.

STATE OF CONNECTICUT, HARTFORD, *January 5, 1809.*

The committee appointed to class the proprietors according to their respective interest into forty-six classes in order to divide the property now belonging to the Company report, that they have accordingly proceeded to class the proprietors into forty-six classes, making an interest of Twenty-six thousand and Eighty-seven Dollars of the original purchase of the State to each class which classing is annexed.

The Company proceeded to draw in the manner following in conformity to the mode or partition.

The 1st Draft

made by Caleb Atwater. (No. 25) 26087. Caleb Atwater who drew lot number 25 of the surplus land containing Two Hundred acres and 2-10ths, Bounded North on lot number 26 and S. on lot number 24, being 11.22 on the north line of 162.00 of the E. Line 13.49, on the S. line and 162.00 on the W. line. Also George Kilburn's Article of 100 8-100 Dolls. and 82 62-100 Dolls. and part of Alexander Campbell's article.

The 2nd Draft

made by Caleb Atwater, Turhand Kirtland and others

Caleb Atwater	1,259.
Turhand Kirtland.....	4,750.
Turhand Jared & B. Kirtland.....	5,000.
Solomon Cowles.....	7,500.
Stanley Griswold.....	846.77
Ozias Marvin & others.....	1,600.
Oliver Stanley.....	1,000.
Levin Tomlinson.....	1,250.
Samuel Woodruff.....	1,500.
Daniel Holbrook.....	1,219.
Charles Hull.....	115.
Daniel Phoenix.....	47.23

 No. 44..... 26,087.

who drew three hundred and eighty dollars and 90 cents, being part of Samuel Canary's note of 405 46-100 Dollars.

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The 3rd Draft

made by Eliphalet Austin and others

Eliphalet Austin.....	3,000.
Montgomery & Eliphalet Austin.....	3,084.12
John Gillett.....	2,056.08
Job Curtis.....	1,370.72
Jabez Gillet.....	1,713.40
Samuel J. Mills.....	1,370.72
Nehemiah Gaylord.....	1,028.04
John Strong.....	1,028.04
Plum Sutliff.....	471.36
David Soper.....	471.36
William Battle.....	3,000.
William and Joseph Battle.....	129.08
Thomas Huntington.....	1,988.
Samuel Rockwell.....	3,253.77
Martin King.....	685.36
Hezekiah Huntington.....	200.
Royal Tyler.....	123.59

 No. 15..... 26,087.

who drew lot No. 15 of the surplus land containing Two hundred and two acres and 3-10ths, Bounded north on lots No. 16, S. on lot No. 14, being 26.27 on the N. line 75.50, on the E. line 27.32 on the S. line and 75.50, on the W. line.

Also 128 2-10ths Dolls. part of Nathaniel Doan's note.

The 4th Draft

made by Calvin Austin and others

Calvin Austin and Oliver L. Phelps.....	893.
Calvin Austin.....	1,595.
Gideon Granger.....	11,978.
Andrew Hull, Jr.....	2,268.
Wm. Law.....	4,108.
Jabez Adams.....	1,045.
Ward Atwater.....	200.
Josiah Barber.....	1,507.
Royal Tyler.....	1,756.41
Horace Perry.....	277.59
Jonathan Dwight & Co.....	348.
Oliver L. Phelps.....	111.

 No. 8..... 26,087.

who drew lot Number Eight in the surplus land containing two hundred and one acres 9-10ths, bounded North on lot No. 157 9 and S. on lot No. 7, being 32.96 on the N. line, 60.50 on the E. line, 33.80 on the south line, 60.50 on the W. Also David Seaver's article for 27 Dolls. and 111 62-100ths of Samuel Huntington's article.

The 5th Draft

made by Elijah Boardman and others

Elijah Boardman	19,711.25
Homer Boardman.....	2,050.
David S. Boardman.....	2,500.
Jonathan Giddings	1,200.
Zepheniah Briggs	200.
Roger Skinner	425.75

 No. 16 26,087. |

who drew lot number 16 of the surplus land containing 202 acres and 1-10th, bounded N. on lot No. 17 and S. on lot No. 15, being 25.17 on the N. line, 78.60 on the E. line, 26.27 on the S. line, 78.60 on the W. line; also John Thomas' article of 164 Dolls. and City Lot in Cleveland No. 48.

The 6th Draft

made by Thomas Bull and others

Thomas Bull	5,560.
Ezekiel Williams, Jr.....	4,800.
Samuel W. Williams.....	4,800.
Timothy Burr	3,000.
Timothy Burr's heirs	2,000.
Elisha Strong	4,000.
William and Joseph Battle.....	1,927.

 No. 43 26,087. |

who drew lot No. 23 of the surplus land containing 200 acres and 4.10ths, bounded N. on lot No. 24 and S. on lot No. 22, being 15.44 on the N. line 123 degrees on the E. line 17.16 on the S. line, 123.00 on the W. line; also 102 76-100ths Dollars part of Rhodolphus' Article; also 77.74 dollars in Charles Parker's article.

The 7th Draft

made by Robert's Breck's heirs and others

	Robert Breck's heirs.....	8,518.
	Reuben Dresser	800.
	Lemuel and Asahel Pomroy.....	600.
	Welch and Hinckley.....	5,958.86
	John Breck	3,160.
158	Asa White	1,050.14
	Ebenezer Hunt	6,000.
	<hr/>	
	No. 43	26,087.

who drew two hundred fifty-five dollars 88-100 part of Ezekiel Hawley's contract 47.35 dolls. part of Joseph Pepoon's note 25.91 dolls. part of James Kingsbury's Article 24.56 dolls. part of Samuel Canary's note 24.55 dolls. part of another note of Samuel Canary's and 21.65 dolls. part of Jonathan Root's note.

The 8th Draft

made by William Billings and others

	Wm. Billings.....	1,600.
	Wm. Billings & O. Smith.....	2,500.
	John Williams	500.
	Samuel Ware, Jr.....	400.
	John Stoddard.....	1,170.
	Wright and Stoddard.....	3,000.
	Nathaniel and Daniel Edwards.....
	David Strong and Isaac Parsons.....	4,390.
	Ebenezer Parsons.....	3,000.
	James and William Wadsworth.....	4,000.
	Sylvanus Griswold.....	400.
	Benjamin Bates and others.....	4,285.62
	Samuel Collins.....	800.
	Welch and Hinckley.....	41.38
	<hr/>	
	No. 10.....	26,087.

who drew lot No. 10 of the surplus land containing 201 acres and 7-10ths, bounded N. on lot No. 11 and S. on lot No. 9, being 31.20 on the N. line, 63.75 on the E. line, 32.9 on the S. line, and 63.75 on the W. line; also 179.20 dolls. part of David Kellogg's article.

The 9th Draft

made by Levi Bronson and others and Benjamin Doolittle, Jr.,
and others

Levi Bronson and others.....	21,600.
Benjamin Doolittle, Jr.....	1,592.
Samuel Doolittle	80.
Wm. Law.....	2,815.

No. 45..... 26,087.

who drew 380 dollars 90-100th- part of Samuel Canary's note of
\$405.45.

159

The 10th Draft

made by Peter C. Brooks and others

Peter C. Brooks.....	13,000.
John Call.....	1,500.
Wm. Shaw.....	5,063.
Geo. Blake.....	5,000.
Pennel Chinney.....	1,524.

No. 31..... 26,087.

who drew one hundred seventy-five acres in Mentor on the south line
surveyed to Charles Parker; also 33.84 dollars in Aaron Hart's
article 55-100 part of N. Doan's note 5.91 dollars part of Sylvanua
Burke's article, 6.66 dolls. part of Alexander Canfield's article, and
1.30 dolls. part of Adam Bush's article.

The 11th Draft

made by Daniel L. Coit, No. 33

Daniel L. Coit..... 26,087.

who drew 125 acres west of Meny's survey to James Jackson in the
township of Mentor; also Ebenezer Meny's article of 82.12 dolls. and
20.48 dolls. part of James Hamilton's article; also 43.93 dolls. part
of Josiah Pepoon's note.

The 12th Draft

made by Daniel L. Coit and others

Daniel L. Coit.....	3,337.
Gardner Green.....	5,047.
Nathan Grosvenor.....	713.
Daniel Lathrop.....	3,626.
Samuel Huntington.....	3,200.
Christopher Leffingwell.....	3,620.
Erastus Huntington.....	3,000.
Tracy and Coit.....	3,544.

No. 2..... 26,087.

who drew Lot No. Two in the surplus land containing 152.1 acres, bounded N. on lot No. 3 and S. on lot No. 1, being 37.76 on the N. line, 40 on the E. line, and 38.32 on the S. line and 40 on the west line. Also Wm. King and Justus Remington's article for 166.51 dolls. and Amos Spafford's article for 62.24 dollars.

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The 13th Draft

made by Henry Champion, No. 18

Henry Champion..... 26,087.

who drew lot No. 18, in the surplus land containing Two hundred and one acres and 6-10ths, bounded north on lot N. 19 and S. on lot No. 17, being 22.81 on the N. line, 86.10 on the E. line and 24.2 of the S. line and 88.10 on the W. line; also two hundred fifty-nine dollars 94 cents part of Adam Duches' article.

The 14th Draft

made by Henry Champion and Lemuel Storrs

No. 37, Henry Champion..... 16,877.

Lemuel Storrs..... 9,210.

26,087.

who drew three hundred eighty dollars 90 cents part of Robert Russell's article.

The 15th Draft

made by Judson Canfield and others

Judson Canfield..... 10,226.50

Judson Canfield and others..... 855.

Timothy Chittenden..... 1,000.

James Johnson..... 4,322.

David Waterman..... 4,128.

Peruel Cheney..... 106.

Jonathan Dwight & Co..... 5,439.50

26,087.

who drew lot number three in the first survey of Euclid containing 80 acres; also City lot in Cleveland numbered 79 and One hundred seventy-four dollars 90 cents part of James Kingsbury's article.

The 16th Draft

made by Ebenezer Devotion and others

	Ebenezer Devotion.....	3,260.
	Wm. Perkins.....	1,840.
	Joseph Burnham.....	1,200.
	John McLellan.....	569.
	Elisha Tracy.....	10,503.
	Ward and Donance.....	1,426.
	Samuel Donance.....	815.
	Ichabod Ward.....	156.
161	Richard McCurdy.....	3,018.
	Sylvester Mather.....	3,300.

No. 38..... 26,087.

who drew John Dillis contract for Three hundred and twenty-four dollars and 50 cents, and fifty-six dollars 40-100 part of Samuel Canary's note of 61.58 dollars.

The 17th Draft

made by Oliver Ellsworth's heirs, No. 17

Oliver Ellsworth's heirs..... 26,087.

who drew lot No. Seventeen in the surplus land containing 221.9 acres, bounded N. on lot No. 18, S. on lot No. 16, being 24.2 on the N. line 82.10 on the E. line 25.17 on the S. line and 82.10 on the W. line; also Charles Niles' article of 255.86 dolls. and 30.96 dolls., part of Nathaniel Doan's article.

The 18th Draft

made by Oliver Ellsworth's heirs and others

	Oliver Ellsworth's heirs.....	13,673.
	Caleb Strong.....	12,000.
	John Frost.....	400.
	Seth Porter.....	14.

No. 41..... 26,087.

who drew One hundred and thirty-eight dollars 20-100ths part of Shehy and Quigley's article, 64.10 dolls. part of Robert Russell's article and 178.60 part of Joseph Pepoon's note.

The 19th Draft

made by Pierpont Edwards, No. 19

Pierpont Edwards..... 26,087.

who drew lot number 19 in the surplus land containing Two hundred and one acres 8-10ths, bounded N. on lot No. 20 and S. on Lot No. 18, being 21.54 on the N. line, 91 on the E. line 21.82 on the S. line and 91. ch. on the W. line. Also Two hundred fifty-nine dollars 82-100ths part of Susannah Hamilton's article.

The 20th Draft

made by Justin Ely and others and John H. Buell and others

	Justin Ely.....	7,711.
	Roger Newberry.....	211.
	Jonathan Brace.....	2,313.
	Elijah White.....	7,711.
162	Enoch Perkins.....	1,955.
	Roger Newberry and others.....	1,257.
	John H. Buell.....	4,924.
	Jonathan Dwight and others.....	5.

No. 12..... 26,087.

who drew Lot number twelve in the surplus land containing 202 acres 6-10ths, bounded north on Lot No. 13, S. on lot No. 11, being 29.32 on the N. line, 68 on the E. line, 30.28 on the S. line and 68 on the W. line; also Charles Miles' article 173.75 dollars and 4.51 dollars part of Lorenzo Carter's note.

The 21st Draft

made by Justin Ely and others

Justin Ely.....	5,217.
Roger Newberry.....	5,217.
Elijah White.....	5,217.
Enoch Perkins.....	5,218.
Jonathan Brace.....	5,218.

No. 5..... 26,087.

who drew lot No. five in the surplus land containing two hundred and two acres and 4-10ths, bounded N. on lot No. 6 and S. on lot No. 4, being 35.44 on the N. line, 56.50 on the E. line, 36.23 on the S. line, and 56.50 on the W. line; also Wm. W. Williams' Article of 176 dollars and 20 50-100 dollars part of Adam Dush's article.

The 22nd Draft

made by Samuel Fowler and others

Samuel Fowler.....	13,043.
Thorndyke and Prescott.....	6,522.
John Wylis.....	6,522.

No. 36..... 26,087.

who drew John Dille's article for Three hundred thirteen dollars 31-100ths; also 7.59 dollars part of Ezekiel Halley's contract for 323.47 dollars.

The 23rd Draft

made by Gideon Granger, No. 32

Gideon Granger..... 26,087.

who drew one hundred and five acres in the township of Mentor on the south line surveyed to Charles Parker; also 184.5 dollars part of Ira Ensign's article of 272.63 dollars.

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The 24th Draft

made by Gardiner Green, No. 3

Gardiner Green..... 26,087.

who drew lot No. 3 in the surplus land containing two hundred and two acres and 2-10ths, bounded N. on lot No. 4 and South on lot No. 2, being 37.00 on the north line 54.10 on the E. line 37.76 on the S. line N. 54.10 on the W. line; also Nathaniel Chapman's article of 125 dolls. and 3.50 dolls. part of Amos Spafford's article.

The 25th Draft

made by Uriel Holmes, Jr., No. 7

Uriel Holmes, Jr..... 26,087.

who drew lot No. 7 in the surplus land containing Two hundred two acres and 1-10th; bounded N. on lot No. 8, and S. on lot No. 6, being 33.80 on the N. line, 59.8 on the E. line, 34.63 on the S. line and 59.8 on the W. line; also Henry G. Edwards' article of 147.60 dolls. Rodolphus Edwards' recpt. for a compass Ten Dolls. 72-100ths part of Amos Spafford's article, and 27-100ths part of Giles Beacsh's article.

The 26th Draft

made by Samuel Hinckley and others

Samuel Hinckley.....	25,804.14
Philip Shaw.....	133.
Asa White.....	149.86

No. 46..... 26,087.

who drew Lorenzo Carter's note to Joshua Storr of 196.42 dollars also 136.40 dollars part of Joshua Storr's note. Daniel Shehy's note of

eight dollars 7.68 dols. part of Ira Ensign's note. Two dollars part of Jonathan Root's note 17.16 part of Joel Thorp's contract 5.18 dols. part of Samuel Canary's note and 7.69 dols. part of Susannah Hamilton's contract.

The 27th Draft

made by Wm. Hart, No. 9

William Hart..... 26,087.

who drew Lot No. nine in the surplus land containing Two hundred and one acres and 3-10ths, bounded N. on lot No. 10 and S. on lot No. 8, being 329 on the N. line, 61.90 on the E. line, 32.96 on the S. line and 61.90 on the W. line; also Rodolphus Edwards' 3d note of 146.50 dols. and 2.90 dollars part of Lorenzo Carter's note of 18.02 dollars.

164

The 28th Draft

made by William Hart and others

William Hart..... 14,375.
Richard W. Hart..... 3,000.
Samuel Mather, Jr..... 7,080.
Gaylord Griswold..... 1,632.

No. 40..... 26,087.

who drew three hundred and eighty dollars 90-100ths part of James Quigley's and Daniel Shehy's article.

The 29th Draft

made by Nehemiah Hubbard, Jr. and Joshua Storr

Nehemiah Hubbard, Jr..... 13,158.77
Joshua Storr..... 12,928.23

No 39..... 26,087.

who drew three hundred and eighty dollars 90-100ths part of James Quigley's and Daniel Shehy's article.

The 30th Draft

made by Nehemiah Hubbard, Jr., and others

Nehemiah Hubbard, Jr..... 976.23
Asher Miller..... 2,580.
Jozeb Stocking..... 3,808.
David Huntington..... 300.
Samuel P. Lord..... 18,092.
Jonathan Dwight..... 4.
Theodore Griswold..... 51.
Joshua Storr..... 276.

No. 34..... 26,087.

who drew One hundred and sixty acres of land in the township of Mentor, surveyed to George Whitehill, also Two hundred and thirty and 90-100ths dolls. part of Joel Thorp's article.

The 31st Draft

made by Samuel Mather, Jr., No. 4

Samuel Mather, Jr. 26,087.

who drew lot number four in the surplus land containing 202 acres 7-10ths, bounded N. on lot number 5 and S. on lot number 3, being 36.23 on the N. line 55.30 on the E. line, 37.00 on the S. line, 55.30 on the W. line, also Sam'l Jones' article of 178 dolls. 20-100ths.

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The 32nd Draft

made by Asher Miller and Nathaniel Shalor

Asher Miller 13,420.
Nathaniel Shalor 12,667.

No. 13. 26,087.

who drew lot number thirteen in the surplus land containing Two hundred and two acres, bounded N. on lot No. 14 and S. on lot No. 12, being 28.34 on the N. line, 70.10 on the E. line, 29.32 on the S. line and 70.10 on the W. line, also Samuel Dodge's article 27 dollars 61-100. Samuel Dodge's article 85 dolls. John Shaw's article, 34 dolls. 38 cts. 10 dolls. 60 cents part of Lorenzo Carter's notes of 18 dolls. 2 cents. Part of Samuel Huntington's and 38c. part of Samuel Jones.

The 33rd Draft

made by Birdseye Norton and others

Birdseye Norton 11,077.77
Wm. F. Miller..... 2,400.
Ephraim Starr 5,000.
David Hudson, Jr..... 900.
Samuel Oviatt 800.
Lewis N. Norton..... 300.
Samuel Rockwell 3,514.
Nathaniel Church 1,995.

No. 27. 26,087.

who drew lot number Twenty-seven in the surplus land containing 184 acres 8-10ths, bounded N. by Lake Erie, S. by lot No. 26, being 5.15 on the N. line, 266 chs. on the E. line 8.74 on the S. line and 266.00 on the W. line; also 140 dollars 66-100ths part of James Kingsbury's articles.

The 34th Draft

made by Samuel Parkman and Wm. Shaw

Samuel Parkman	14,900.
Wm. Shaw	11,187.
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No. 26	26,087.

who drew lot number twenty-six in the surplus land containing One hundred seventy-six acres 6-10ths, bounded N. on lot No. 27 and S. on lot No. 25, being 8.74 on the N. line, 177 chs. on the E. line, 11.22 on the S. line, and 177.00 on the W. line; also 166.15 dolls. Part of James Kingsbury's article of 604.36 dolls.

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The 35th Draft

made by Oliver Phelps and Thomas Sheldon

Oliver Phelps	23,535.
Thomas Sheldon	2,552.
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No. 24	26,087.

who drew lot number Twenty-four in the surplus land containing Two hundred and one acres and 1-10th, bounded N. on lot No. 25 and S. on lot No. 23, being 13.49 on the N. line, 139 ch. on the E. line 15.44 on the S. line, and 139.00 on the W. line. Also debt against Oliver Phelps, One hundred and two and 60-100 dollars, 75.28 part of James Hamilton's contract and 1.92 part of Nathaniel Doan's.

The 36th Draft

made by Joseph Perkins and others

Joseph Perkins	13,959.
John Kinsman	1,117.
Tracy and Coit	7,056.
Wm. Eldridge	2,000.
John McClellan	170.
Daniel Tilden	1,200.
Jabez Adams	585.
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No. 30	26,087.

who drew city lots in Cleveland viz. No. 64, 65, 66, 67, 68, 69, 70, 71, 72, also James Kingsbury's note of 98.16 dollars and 92.74 dollars part of James Kingsbury's contract.

The 37th Draft

made by Ephraim Root. No. 29.

Ephraim Root	26,087.
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who drew city lots in Cleveland, viz. Nos. 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, also ten-acre lots in said Cleveland, Nos. 51, 52 and 77; also Joshua Storr's note of 83. dolls. 16-100ths, 1.29 dolls. part of Nathaniel Doan's article.

The 38th Draft

made by Ephraim Root. No. 20.

Ephraim Root 26,087.

who drew lot number Twenty in the surplus land containing 201 acres and 6-10ths, bounded N. on Lot No. 21 and S. on lot No. 19, being 20.19 on the north line, 96.60 on the E. line, 21.54 on the S. line, 96.60 on the W. line. Also Two hundred fifty nine dollars 94 cents part of Sylvanus Burk's article of 265.88 dollars.

167

The 39th Draft

made by Lemuel Storrs

Lemuel Storrs, No. 1 26,087.

who drew lot Number One in the surplus land, containing 131. acres and 1-10th, bounded north on lot No. 2 and S. on the S. line of the Reserve, being 38.32 on the N. line, 34. on the E. line, 38.79 on the S. line and 34.00 on the W. line; Also Giles Beecher's articles Two hundred forty-nine dollars 80 cents.

The 40th Draft

made by Titus Street and Isaac Mills

Titus Street 19,846.

Isaac Mills 6,241.

No. 35 26,087.

who drew Henry G. Edwards' article Three hundred dollars, also 80.90 dollars part of Ira Ensign's note.

The 41st Draft

made by Martin Sheldon and others

Martin Sheldon 10,380.

Calvin Austin and Oliver L. Phelps..... 10-107.

Asahel Hathaway 2,000.

Oliver L. Phelps 3,600.

26,087.

who drew lot number Six, in the surplus land containing Two hundred and one acres and 8-10ths, bounded North on lot No. 7 and

South on lot No. 5, being 34.63 on the N. line, 57.60 on the E. line, 35.44 on the S. line, 57.60 on the W. line; also City lots in Cleveland Nos. 161, 162 and 216; also Thomas Mariels' articles 129.10 dolls.

The 42nd Draft

made by Oliver Sheldon and others

Oliver Sheldon	200.
Simeon Griswold	8,528.
Ira Goodrich and Oliver Sage.....	2,400.
Samuel Hale and W. W. Williams.....	2,500.
Samuel Hale	500.
Benajah Kent	4,162.
Roger Skinner	1,074.
John Bolle	6,630.
Josiah Barber	93.

No. 22 26,087.

168 who drew Lot Number Twenty-two containing Two hundred and one acres and 9-10ths, being 16.00 on the N. line, 112.50 on the E. line, 18.73 on the S. line, 112.50 on the W. line, also 229.47 dolls. of Adolphus Edward's article in part.

The 43rd Draft

made by Benjamin Tappan and others

Benjamin Tappan	8,392.
Elijah Wadsworth	4,869.
Martin Smith	640.
Wm. Ely	7,057.
Wm. W. Williams	241.
Samuel J. Andrews	200.
Daniel Green	33.
Isaac Mills	159.
Royal Pease, and others.....	1,500.
Seth Porter	2,986.
Jonathan Dwight & Co.....	10.

No. 21 26,087.

who drew lot Number Twenty-one in the surplus land containing 202 acres, being 1.873 on the N. line 103.80 on the E. line 20.19 on the S. line and 103.80 on the W. line; also Allyn Gaylord article 211.80 and 17.60 dolls. part of Jonathan Root's contract.

The 44th Draft

made by Benjamin Talmage and others

Benjamin Talmage	6,200.
Solomon Lathrop	5,011.
Pierpont Edwards	2,598.
Jeremiah Wilcox	3,542.
Uriel Holmes, Jr.	4,913.
Daniel Green	3,723.
Jonathan Dwight & Co.	100.
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	26,087.

who drew lot Number Eleven in the surplus land containing Two hundred and two acres and 1-10th, being 30.28 on the N. line, 65.75 on the E. line, 31.20 on the S. line, and 65.75 on the W. line; also One hundred and forty-one 80-100ths dollars part of David Kellogg's article and Two notes against Elijah Gunn; 158.57 dolls. and 190.41 dolls. at 37 dolls.

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The 45th Draft

made by David Tuttle and others

David Tuttle	685.36
Aaron Olmstead's heirs	12,903.23
Ashbel King and others	2,500.
King & Kendall	1,223.
King & Pierce	200.
Thomas Jas. Douglass	2,000.
Joseph Lynde	800.
John Worthington's heirs	1,600.
Daniel Phoenix	2,952.68
Horace Sperry	1,222.73
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No. 42	26,087.

who drew Abner Cochran's contract, Two hundred eighty-nine dollars 96-100ths and 90.94 dolls. part of Joseph Pepoon's note.

The 46th Draft

made by Jos. Williams' heirs and others

Jos. Williams' heirs	12,903.
Moses Cleveland's heirs	8,151.
Lynde McCurdy's heirs	2,777.
Seth King's heirs	558.
Peleg. Sanford's heirs	1,600.
Jonathan Dwight & Co.	98.
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	26,087.

who drew lot No. 14 in the surplus land containing 202.3 acres, being 27.32 on the N. line, 72.75 on the E. line, 28.34 on the S. line, and 72.75 on the W. line; also 158.37 dollars, part of Nathaniel Dean's article of 293.56 dollars.

Voted, that the obligations and contracts which have been divided to the members of the company be delivered to Turhand Kirtland, Esq., and that Ephraim Root, Esq., take his receipt therefor, specifying said obligations and contracts and that said Kirtland is accountable therefor to the persons to whom divided, according to their respective interests therein, reserving the right of proprietors to receive of said Root such of said obligations and contracts as they may be entitled to, the same being applied for within three months from the present time.

Voted, that this meeting be adjourned without day.

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Pease's Survey.

EXHIBIT B.

The survey of the City of Cleveland, begun September the 16th, 1796, situate on the east side of the Cuyahoga river at its mouth, containing 220 lots.

No. of the lot.	Length on W. side. Above Ge. bank.	Length of E. side. Above Ge. bank.	Width of the lot.	Contents in acres.
1	8.50	8.24	200	1-106 1-4
2	8.24	8.40	200	1-108 1-6
3	8.40	8.36	200	1-104 7-11
4	8.36	8.18	200	1- 98 8-9
5	8.18	8.00	200	1- 96
6	8.00	8.00	200	1- 98 2-5
7	8.00	8.15	200	1- 98 2-5
8	8.15	8.00	200	1-102 1-4
9	8.00	8.39	200	1-109 1-9
10	8.39	8.43	200	1-106 1-12
11	8.43	8.20	200	1- 93 4-50
12	8.20	7.62	200	1- 66 2-5
13	7.00	7.15	200	1- 80 2-3
14	7.15	7.89	200	1- 88
15	7.89	7.61	200	1- 77 3-5
16	7.61	7.24	200	1- 73
17	7.24	7.32	200	1- 74
18	7.32	7.30	200	1- 69
19	7.30	7.00	200	1- 61
20	7.00	6.80	200	1- 61
21	6.80	7.45	200	1- 68
22	7.45	4.56	200	1- 80
23	7.56	7.36	200	1- 79
24	7.36	7.08	200	1- 71

No. of the lot.	The length in chains and links.	The width.	Contents. Acres and rods.
25	10.06	200	2-5
26	10.06	200	2-2
27	10.06	200	2-2
28	10.06	200	2-2
29	10.05	200	2-1 2-3
30	10.05	200	2-1 2-3
31	10.05	200	2-1 2-3
32	10.05	200	2-1 2-3
33	10.04	200	2-1 1-3
171 34	10.04	200	2-1 1-3
35	10.04	200	2-1 1-3
36	10.04	200	2-1 1-3
37	10.04	200	2-4 1-2
38	10.04	200	2-1 1-3
39	10.04	200	2-1 1-3
40	10.04	200	2-1 1-3
41	10.04	200	2-1 1-3
42	10.04	200	2-1 1-3
43	10.03	200	2-1
44	10.03	200	2-1
45	10.03	200	2-1
46	10.03	200	2-1
47	10.03	200	2-1
48	10.03	200	2-1

These lots front on the south side of Lake street, beginning at the west end.

No. of the lot.	The length in chains and links.	The width in links.	Contents. Acres and rods.
49	10.06	200	2- 5
50	10.06	200	2- 5
51	10.05	200	2- 1 2-3
52	10.05	200	2- 1 2-3
53	10.04	200	2- 1 2-3
54	10.04	200	2- 1 1-3
55	10.03	200	2- 1
56	10.03	200	2- 1
57	10.02	200	2- 0 2-3
58	10.02	200	2- 0 2-3
59	8.01	200	1-96 1-3
60	8.01	200	1-96 1-3
61	8.00	200	1-96
62	8.00	200	1-96
63	10.00	200	2- 0
64	10.00	200	2- 0
65	10.00	200	2- 0
66	10.00	200	2- 0
69	10.00	200	2- 0
70	10.00	200	2- 0
71	10.00	200	2- 0
72	10.00	200	2- 0

These lots front on the north side of Superior Street, beginning at

172

Front on Superior street.	Part north of Maiden lane. The length of that—		Part south of Maiden lane. The length of that—	
	West side.	East side.	West side.	East side.
73	6.18	6.45	5.50	6.02
74	6.45	6.72	6.02	6.64
75	6.72	6.99	6.64	7.23
76	6.99	7.80	7.23	7.21
77	7.88	8.50	7.21	7.21
78	8.50	9.27	7.21	7.12
79	9.27	10.07	7.12	7.00
80	10.07	10.70	0.00

Front on Superior street.	North side of the road.	South side of the road.	Total acres.	Rods.
73	1- 42	1 24	2	66
74	1- 50½	1 42½	2	93
75	1- 59	1 61¾	2	120¾
76	1- 76½	1 71	2	147½
77	1-180¾	1 70¾	3	111½
78	1-124¼	1 69	3	33¼
79	1- 49	1 66	3	55
80	2- 12	2	12

N. B.—The width of each of the above lots is two chains.

No. of lot.	The length. Ch. Li.	Contents. Acres.	R.	Width of each lot is 2 chains and fronts on—
81	10.70	2	22 2-5	South Side of Su- perior and N. Side of Maiden Lane.
82	10.70	2	22 2-5	
83	6.70	1	54 2-5	
84	6.70	1	54 2-5	
85	6.00	1	32	
86	6.00	1	32	
87	10.00	2	0	
88	10.00	2	0	

No. of the lot.	The length. Ch. Li.	Contents. Acres.	R.	Width of each lot is 2 chains and fronts on—
89	10.00	2	0	South Side of Su- perior street.
90	10.00	2	0	
91	10.00	2	0	
92	10.00	2	0	
93	10.00	2	0	
94	10.00	2	0	
95	10.00	2	0	
96	10.00	2	0	

173 No. 97 is Irregular by Means of a Triangular Piece Being Cut Off from Its Front for Accom. the Highway. Its Width is 8 Rods, the East Side is 10 Chains in Length, and the West Side is 8 Chains, and Contains:

The following No. contains two acres, being 10 chains in length and two in width:

No.	2 acres Lots.	No. the lot.	Length. Li. Ch.	Width. Li. Ch.	Content. Acres.	Content. Rods.
98		134	18 00	2 00	3	96
99		135	18 00	2 00	3	96
100		136	18 00	2 00	3	96
101		137	18 00	2 00	3	96
102		138	18 00	2 00	2	96
103		139	18 00	1 50	2	112
104		140	18 00	2 00	3	96
105		141	18 00	2 00	3	96
106		142	18 00	2 00	3	96
107		143	18 00	2 00	3	96
108		144	18 00	2 00	3	96
The above lots front on Erie street, E. Side.						
		145	10 00	2 00	2	0
		146	10 00	2 00	2	0
		147	10 00	2 00	2	0
		148	10 00	2 00	2	0
		149	10 00	2 00	2	0
		150	10 00	2 00	2	0
		151	10 00	2 00	2	0
		152	10 00	2 00	2	0
		153	10 00	2 00	2	0
The above lots front on Huron street, South Side.						
109						
110						
111						
112						
113						

174

No. of the lot.	Length in—		Width in—		Contents.		Fronts on—
	Ch.	Li.	Ch.	Li.	Acres.	R.	
154	10	00	2	00	2	00	Huron St. North Side.
155	10	00	2	00	2	00	
156	10	00	2	00	2	00	
157	10	00	2	00	2	00	
158	10	00	2	00	2	00	
159	10	00	2	00	2	00	
160	10	00	2	00	2	00	
161	10	00	2	00	2	00	
162	10	00	2	00	2	00	
163	18	00	2	00	3	96	Erie Street East Side.
164	18	00	2	00	3	96	
165	18	00	2	00	3	96	
166	18	00	2	00	3	96	
167	18	00	2	00	3	96	
168	18	00	2	00	3	96	
169	10	00	2	00	2	00	
170	10	00	2	00	2	00	
171	10	00	2	00	2	00	
172	10	00	2	00	2	00	
173	10	00	2	00	2	00	
174	10	00	2	00	2	00	Federal Street South Side.
175	10	00	2	00	2	00	
176	10	00	2	00	2	00	
177	10	00	2	00	2	00	
178	9	99	2	00	1	159 $\frac{1}{2}$	Erie Street East Side.
179	9	98	2	00	1	159 $\frac{1}{2}$	
180	9	97	2	00	1	159	
No. of the lot.	Length in—		Width in—		Contents.		Fronts on—
	Ch.	Li.	Ch.	Li.	Acres.	R.	
181	9	96	2	00	1	159	Erie Street E. Side.
182	9	96	2	00	1	159	
183	9	96	2	00	1	159	
184	9	96	2	00	1	159	
185	9	96	2	00	1	159	
186	9	96	1	92	1	146	

No. of the lot.	Width in front, 125 links.		Mean above the bank.		There is about three acres of broken bank to this lot.		Contents above the bank.	
	Length above the bank. West side.		Length above the bank. East side.		Width. Ch.	Li.	Acres.	R.
187	18	86	18	40	2	00	3	116
188	18	40	18	50	2	00	3	110
189	18	50	18	64	2	00	3	114
190	18	64	17	80	2	00	3	103

The last lots front on Federal Street North Side and extend to the Lake. Each lot has about $\frac{1}{2}$ or $\frac{3}{4}$ acre of broken ground measured below the bank.

No. 191.—These lots front on Water Street W. side North Line, course South, 64 degrees West 26.00 South Line Course South 56 degrees West 20.08 East Line front course N. 34 degrees W. 1.12 West on the river course, N. W.

Contents.

No.	Length of the north line.		Length of the south line.		Width in contents.		
	Ch.	Li.	Ch.	Li.	Links.	Acres.	Rods.
192	20	08	18	31	200	3	134
193	18	31	16	39	200	3	75
194	16	39	14	50	200	3	14
195	14	50	13	00	200	2	120
196	13	00	12	00	200	2	80
197	12	00	11	84	200	2	61

The following lots fronting on Water Street being intersected by Road. The relative situation and dimensions are expressed in the following plan—the Front of each lot is 200 links except No. 198, which is only 100 links.

No. 206 contains 0 acres and 154 Square Rods. It is a triangular piece of land bounded on Maiden Lane on one side—one Vineyard Lane on another side, and on Lot No. 73 on the other.

176

No. of the lot.	Length on the north side.	Length on the south side.	Width.	Contents.	
207	10.00	10.00	2.00	2.06	This lot is irregular at the rear. See the plan.
208	10.00	10.00	2.00	2.00	
209	10.00	10.00	2.00	2.00	
210	10.00	7.45	2.55	2.00	This lot is irregular at the rear.
211	12.50	10.25	2.00	2.44	
212	10.25	9.18	2.00	1.150	
214	9.09	10.00	2.00	1.146	
215	10.00	13.11	2.00	2.50	
216	13.11	23.55	2.00	3.106	
217	23.55	27.78	2.00	5.21	
218	27.78	30.30	2.00	5.129	
219	30.30	32.00	2.00	6.37	
220	32.00	33.30	2.00	6.85	

The Minutes of the Survey of the Several Streets and Lanes in the City of Cleveland.

First: is Superior Street—North side, beginning at the West end where it connects with Water street at a post (from said post a white oak mark- bears S. 31° E. dist. 21 links) Thence runs N. 56° E. (counting from the true meridian) 20 chains to the Square—then keeping the same course across the Square to a corner post on the other side of the Square 9.50 links from the last post a white oak marked E bears N. 25° W. 24 links dist. Thence N. 56° E. 20.00 to the west side of Erie street to a corner post from which an W. oak marked d bears S. 82° W. dist. 46 links. N. B. this street is 200 links in width.

Survey of Lake Street. North side, beginning at the west end of Water street at a corner post from (which a white wood tree marked h bears C. 31° E. dist. 31 links) thence run N. 56° E. 2400 links to the west side of Ontario street to a corner post (from which a black oak marked j bears N. 42° E. dist. 38 links—thence across 8^d street to a post from which a white oak marked k bears N. 22° W. dist. 24—thence to the west side of Erie street 24.00 to a corner post from which a white oak marked N. bear- N. 69° W. 45 links distant. This street is 150 links in width.

Federal street is parallel to Superior street—the South side
177 of Federal street is half way from Superior street to Lake street—it begins at Erie street and runs N. 56° E. to the East line of the City Limits. Its length is 1,800 links and its width is 150 links.

A Description of Huron Street. It is parallel to Superior street and distant from it 20 chains. Its width is 150 links—its length from the E. line of the City to Erie street is 18 chains.

The north side of Huron street from Erie street to Ontario street was at first 24 chains afterwards there was a triangular piece taken off from lot No. 97 to connect said street with Ontario above the bank. The north side of Huron street from Ontario to the river is 745 links. The south side of Huron street from Erie street to Miami street is 16 chains and from Miami street to the river is 12.50 links.

Ohio street is parallel to Huron street and is distant from it 20 chains. Its whole length is from Miami street to Erie street 1,600 links. Its width is 150 links, or six rods.

The Description of Erie Street—East Side—the distance from the south line of the City Limits to Huron street is 31.50 and from Huron street to Federal street is 32.00 and from Federal street to the top of the banks of the Lake Shore is 17.25 links. West Side. The distance from the south line of the city to Ohio street is 10.00, from Ohio street to Huron street is 20.00—from Superior street to Lake street is 20.03—from Lake street to the top of the banks of the Lake Shore is 708—below the banks not measured—This street lyeth at right angles with Superior street—that is, N. 34° W. or S. 34° E. Its whole length from the south line of the City to the top of the Bank of the Lake is 83.68. The width of this street is 150 links.

Ontario Street, East Side from Huron street to the Square is 14.00—from the Square to Lake street is 1,600—from Lake street to the top of the Bank of the Lake Shore is 700. West Side, From Huron street to Maiden Lane is 8.55—from Maiden Lane to the Square is 6.70—from the Square to Lake street is 16.00. From Lake street to the top of the Bank of the Lake Shore is 7.62—the course of this street is N. 34° W. or S. 34° E. and 150 in width.

Miami street connects the west end of Ohio street with Huron street and is parallel to Erie street. Its length is 2,000 and its width is 150.

Water Street East Side from Superior street to Lake street is 2,000, from Lake street to the top of the Bank of the Lake Shore is 1,500; from Mandrake Lane to Bath street is 13.12. Its width is 178 150. Its course is N. 34° W. or S. 34° E.

Survey of Mandrake Lane, West Side.—Beginning at Water street and run by Lot No. 197, S. 56° W. 5.72, then S. 6° E. 561 to Union street—Southeast Side, beginning at Water street and run. S. 56° west 518, thence S. 6° E. 484 to Union Lane. The width of this street is 100.

Survey of Union Lane—North Side—beginning at the south end of Water street west side and run 80° 40 minutes E. 316 to a post—thence N. 56° 50 minutes W. 853 links to a post—thence S. 77° 20 W. 200 to a post where it connects with Mandrake street, thence S. 77° 20 minutes W. across the end of Mandrake lane 101 links; thence S. 56° W. 167 links to the river the width of this line is 100 links.

Survey of Vineyard Lane, West Side, beginning at an angle formed by the continuation of Water street west side, and Superior street south side—thence running S. 8° 20 minutes W. 435 to a

white oak, thence S. 24° W. 1,200 to a post thence s. 66° E. 128 to the river. N. B. This road is laid 100 wide—also a reserve is made for a landing place at the river 6 rods immediately east by the last described line—likewise the last mentioned post is distant N. 14° 30 minutes W. 150 links from a stake set at the end of the 17th course of Cuyahoga Traverse.

Survey of Maiden Lane, North Side—beginning at a large black oak marked III on the east side of Vineyard Lane and run N. 64° E. 11.90, thence n. 77° E. 10.57, thence N. 56° E. 826 to the west side of Ontario street.

EXHIBIT C.

Spafford's Minutes.

Minutes of the survey of the outlines, Roads, Lanes and Square of the City of Cleveland, as surveyed for the Connecticut Land Company in the year 1796 by Augustus Porter, said minutes retaken by Amos Spafford, Surveyor, Nov. 6, 1801, said City is bounded as follows, (viz) Beginning on the Lake Shore on the East Bank of the Cuyahoga River, then eastwardly on the shore of the Lake, one hundred and two chains, then south 34° east, 88 chs. and 50 links, then south 56° west, thirty-eight chains 50 links. Then north 34° west ten chains and 50 links. Then south 56° West to the Bank of the Cuyahoga River. Thence down said river as it winds and turns to the place of beginning containing in the whole about 520 acres, through which the following roads are laid in the following manner, namely,

179 Bath street, so called, begins on the East Bank of the Cuyahoga River seven chains 50 links above where it empties into Lake Erie; then North 66° east thirty chains to a large white oak standing on the west line of Water street, all the lands between said line and the Lake is included in said Bath street and is from three to five chains wide.

Water street is bounded by said post on the west side and is one chain and 50 links wide and runs from said post north 34° West to the Lake Shore, then south 34° east 29 chains to a white oak post standing on the northwest corner of Superior street.

Superior street is two chains in width and begins at said last mentioned post and runs north 56° east 50 chains and 50 links to a white oak post standing on the west line of Erie street.

Erie street begins at the last mentioned post and is one chain and 50 links wide and runs north 34° west 32 chains to the Lake Shore, then from said post south 34° east 55 chains to a white oak post marked E. S. No. 133.

Ontario street begins at a post standing on the bank of the Lake on the west line of said street 24 chains east of the east line of Water street, then running south 34° east 51 chains to a post standing in the north line of Huron street. Said street is one chain and fifty links wide.

Huron Street. Begins at a post standing in the north line of said

street on the east bounds of the city 33 chains north by west from the southeast corner of said city, then running south 54° west 53 chains to the east bank of the Cuyahoga, said street being 150 links wide.

Ohio street is 150 links wide and begins at a white oak post standing in the north line of said street and in the west line of Erie street 11 chains 50 links north of the south line of the City then running south 54° west 16 chains to a white oak post marked O. S. No. 117; thence turning at right angles and running in the east line of said street twenty chains to a white oak post standing in the south line of Huron street.

Lake street is 150 links wide and begins at a white oak post standing in the north line of said street in the west line of Erie street 21 chains and 50 links north 34° west from the northeast corner of Superior street, thence running south 56 west 49 chains and fifty links to a white oak post standing in the east line of Water street.

Superior Lane begins at a post standing in the southwest corner of Water street and northwest corner of Superior street, thence running south 77° west nine chains to the Cuyahoga river, thence up the Cuyahoga river 2 chains 50 links, thence north 72° east 180 to a white oak post standing in the center of Superior street on the west line of Water street.

Union Lane begins at the same part of Superior Lane, is 100 links wide and runs nearly a west direction to the Cuyahoga.

Mandrake Lane is 100 links wide and begins at a white oak post standing in the north line of said road and west line of Water street 13 chains south from the post standing at the southeast corner of Bath street running south 56° west, five chains, then nearly south until it strikes Union Lane.

Vineyard Lane, begins at a white oak post standing in the west line of said lane, being the southwest corner of Superior street, then running south 12° west to the Cuyahoga river, said line is 75 links wide. The square is laid out on the intersection of Superior street and Ontario street and contains 10 acres, the center of the junction of the two roads is the exact center of the square. The above described city and plat is laid out into 220 lots of about two acres each which contains what land is described by the outline except about 50 acres lying at the bend of the Cuyahoga which is bottom land and not lotted out, for the particular numbers and boundaries of each lot reference is to be had to the field notes and map in the register's office in the County of Trumbull, in the City of Cleveland. Recorded Feb'y 15, 1852. (Exhibit C.)

And further to maintain the issues on its part, plaintiff offered in evidence, from the record in the Holmes case, the answer of the Cleveland & Pittsburgh Railroad Company. (To which the defendants objected; which objection was overruled by the court; to which ruling of the court the defendants then and there severally excepted.)

Circuit Court of the United States for the District of Ohio.

In Chancery. Pending.

JULIUS C. SHELDON, HENRY HOLMES and FRANCIS GRANGER
vs.
THE CLEVELAND & PITTSBURGH RAILROAD COMPANY et al.

Answer of the C. & P. R. R. Co.

The Separate Answer of the Cleveland & Pittsburgh Railroad Company, One of the Defendants to the Bill of Complaint of Henry Holmes et al., Complainants.

This defendant reserving to itself all right of exception to
181 said bill of complaint, for answer thereto, or unto so much, or such parts thereof, as it is advised is, or are material for it to make answer unto says: It denies that complainants are owners in equity, or tenants in common with any person or persons known or unknown, of the premises described in complainants' said bill of complaint, or that complainants or any, or either of them, have or has any interest or title whatever either legal or equitable, as tenants in common or otherwise in said premises or any part thereof, as alleged in said bill of complaint. And this defendant further answering says, that the greatest part of the territory described in said bill of complaint is situate in Lake Erie, and below low water mark in said lake and entirely covered by the navigable waters thereof and that said lake is situate between the United States and the colonial possessions of Great Britain and is a great public highway, navigable and navigated by foreign and domestic ships of all burdens, and has been ever since the government of the United States existed and prior thereto and still is extensively used by the public for the purposes of the foreign and domestic trade and commerce of the country and is essential and indispensable to the carrying on of such trade and commerce. This defendant, however, admits that so much of the territory described in said bill of complaint, as in the year A. D. 1795 lay southerly of low water mark in Lake Erie was part and parcel of the purchase made in the year 1795 of the State of Connecticut by a company of persons called the "Connecticut Land Company" associated together by articles of agreement and association bearing date on or about the 5th day of September, A. D. 1795, and conveyed by the original proprietors of said company to John Caldwell, Jonathan Brace and John Morgan and to the survivors or survivor of them and the heirs of such survivor forever in trust for the proprietors of said Land Company and their heirs and assigns by deed dated on or about the 5th day of September, A. D. 1795. But the defendant denies that the title to so much of the territory described in said bill of complaint as in the year 1795 lay northerly of low water mark in said lake and covered by its waters was ever at any time vested in the said State

of Connecticut, or that such part of said territory was in the year 1795, or at any other time, either before or since, purchased by said Connecticut Land Company of said state, or conveyed, or intended to be conveyed by said state to said company or that the said State of Connecticut could, had it intended so to do, have conveyed to said Land Company any title whatever to such part of said territory.

To the contrary thereof this defendant says, that the purchase made of said Land Company of said state, was a purchase of land admitting of actual occupation as such and not a purchase of the waters of Lake Erie, or of land covered by the navigable (waters) of said lake; that the title to and control of so much of said territory as in the year 1795 lay northerly of low water mark in said lake and covered by its water, were, when said Land Company purchased the Western Reserve, and received a conveyance thereof from the said State of Connecticut in the Government of the United States, in trust, and not otherwise for the sole use and benefit of the public, and has been so vested from the establishment of said government and that said government has never, at any time, ceded to, or otherwise vested in said State of Connecticut or in said Land Company, or their heirs or assigns such title or control.

And this defendant further answering admits, that the lands described in said bill of complaint, are of great value, and that the amount paid to the said State of Connecticut by said company for the Western Reserve was twelve hundred thousand dollars, as alleged in said bill of complaint. But whether Exhibits D and C respectively are, or not true copies of said articles of association and trust deed, this defendant is wholly ignorant and calls upon complainants for proof of the same. But this defendant denies that the exhibits filed by said complainants with said bill and marked "A," gives a true description of the premises described in said bill or that the same is a true representation of the survey of that portion of the City of Cleveland, as made by the order or under the direction of said Connecticut Land Company. This defendant admits, however, that the original lines of the lots marked on said exhibit are correctly drawn so as to meet the waters of said lake, but it denies that in the original survey of said city there was any other northerly line of Bath street, either drawn on the map or run into the survey, than the water line of said lake. It also denies that the northerly boundary of said two-acre lots adjoining the lake was the bank, or that it was along the red line drawn on said exhibit as thereon stated, but it charges that the only northerly line or boundary, either drawn on the original map or run in such survey, was the water line of said lake. It also denies that the space indicated on said exhibit as lying northerly of a line thereon drawn through Bath street, was at the time said survey was made, or that it was at the commencement of this suit, or is now laid out into sixteen lots and that the same are all improved, as it is stated on said exhibit, or that the same is laid out into any number of lots, or otherwise occupied than as herein stated. And this defendant further answering says

183 that it does not know and has never been informed save by the said complainants' bill and cannot set forth as to its

belief or otherwise whether the Urial Holmes alleged in said bill to be the father of complainant Henry Holmes, was, or not, at any time a member of said Connecticut Land Company, nor whether said Urial ever had, or not, any interest whatever in the purchase made as aforesaid of said State of Connecticut, nor whether complainant Henry Holmes is, or not, an heir at law, or sole heir at law of said Urial, nor whether Martin Sheldon mentioned in said bill, ever had, or not, any interest whatever by purchase, or otherwise, in said Land Company, or in the purchase made of said state as aforesaid, nor whether Julius C. Sheldon is devisee, or not, of said Martin, nor whether Gideon Granger named in said bill ever had or not any interest whatever as original proprietor or otherwise in said company, or in the purchase made by said company of said state; nor whether the complainant Francis Granger is, or not, the surviving executor and trustee of said Gideon. But this defendant denies that complainants Henry Holmes, Julius C. Sheldon and Francis Granger, or any, or either of them, as tenants in common, or otherwise, ever had, or now have, or has, any interest or title whatever, whether acquired by purchase or otherwise, in or to the lands described in said bill of complaint, or any part thereof as alleged in said bill of complaint.

And this defendant further answering denies that Henry B. Hart, of Hartford, Connecticut, or others as heirs-at-law or assigns of Richard W. Hart, or that James Root and Samuel Root, of said Hartford, or either of them, or others, as heirs-at-law, or assigns of Ephraim Root; or that Henry I. Canfield, of Mahoning County, Ohio, or any other person or persons as heirs-at-law of Judson Canfield, or that Frederick A. Boardman of said Mahoning County, or any other person or persons as heirs-at-law of Elijah Boardman, or that Jared P. Kirtland of Cuyahoga County, Ohio, or any other person or persons as heirs-at-law or assigns of Turhand Kirtland or that said State of Connecticut as assignee of Pierpont Edwards or Ashur Miller, or either of them, or that the heirs of Samuel G. Lord, or any or either of them, or their assigns, or the assignee or assigns of any or either of them, or that Lemuel G. Storrs of Lake County, Ohio, or any other person, or persons, heirs-at-law of Samuel Storrs late of Connecticut or their assigns, or the assignee or assigns of any, or either of them; or that Aristarchus Champion of the State of New York, or any other person, or persons, the heirs-at-law of Henry Champion, or that Matthew Richard of Trumbull County, Ohio, and Oren Harmon of Portage County, Ohio, or either of them, as assignee, trustee, or otherwise ever had or now have or has any title whatever, or tenants in common or otherwise, in or to the premises described in said bill or in any part thereof.

And this defendant further answering says; that it has been informed and believes the same to be true, and avers the fact to be, that the articles of association of said Connecticut Land Company contemplated and specially provided and required that all the lands purchased as aforesaid of said State of Connecticut and conveyed by said state to the proprietors of said company, should be surveyed and laid out into counties, townships and lots and distributed among

such proprietors and otherwise disposed of, and that such was the great purpose of said articles. That said Land Company did subsequently to their purchase and in pursuance of their said articles of association proceed to survey and lay out all the lands so purchased of said state into counties, townships and lots, and the greater part of such lots and lands were from time to time prior to the year A. D. 1809 distributed by drafts amongst the original proprietors of said company, and otherwise disposed of, and conveyances of the same were executed by the trustees of said company to the parties entitled thereto; that the last meeting ever held by said company was held at Hartford, in the said State of Connecticut, in the month of January, A. D. 1809, at which meeting, with a view of then fully carrying into execution the provisions of said articles of association, and of bringing to a final close the affairs of said company and of dissolving said association, said company amongst others adopted a resolution in substance as follows, to-wit: "That the company divide in severalty all their property consisting of notes, contracts, book debts and lands, by classing the interest of the company into 46 classes and dividing the property of the company as equally as may be into the same number of parts to be drawn for by each class by lot, which drafts shall vest the property in each class which shall draw the same, and be conclusive on the proprietors of each and every class, and no other allowance shall be claimed on account of any errors that may have happened in cast, measure or otherwise, but said division shall be final unless further property belonging to the company be discovered, and each and every person drawing land, or a contract for the sale of land, shall be at the cost of conveying the same, except the signing of the deed of the trustees," which resolution was then and there by said company fully carried into execution by a distribution of all the then remaining lands and property of said company amongst the proprietors of the same, as in

185 and by the record of the proceedings of said meeting will fully and at large appear and to which for greater certainty this defendant craves leave to refer and make part of its answer; and thereupon said company having fully accomplished the purposes of the association, closed its business, dissolved the association and adjourned without day. And this defendant avers that the final disposition thus made by said company of all its affairs and property has from thence to the filing of complainants' bill, a period of forty years and upwards, remained wholly undisturbed and unquestioned, nor have the proprietors of said company, their heirs or assigns, ever, at any time prior to the filing of said bill, claimed or pretended that all the lands then belonging to said company were not then and there fully distributed and disposed of, and this defendant avers that no further property has since been discovered.

And this defendant further answering admits, that for the reason hereinbefore as well as those hereinafter mentioned, the lands described in said bill of complaint were never drawn for, or otherwise apportioned amongst the members of said company. But this defendant denies that either the legal or equitable title to such lands or to any part thereof, was in the year A. D. 1809, or at any time since, or is

now in the trustees of said Land Company, or their heirs or assigns, or the heirs or assigns of any or either of them, or in the members composing said company, or any or either of them, or their heirs or assigns, or the heirs of assigns of any or either of them, as alleged in said bill of complaint. And this defendant further answering says, that it has been informed and believes the same to be true as alleged in said bill of complaint, that the trustees of said company are deceased, and that John Morgan survived his co-trustees; but whether said Morgan at his decease did, or not, leave one Mrs. Glover his sole heir-at-law, or whether said Morgan did, or not, at his decease leave any heirs-at-law, or whether the persons named in said bill as the children and grandchildren of Mrs. Glover, are, or not, the descendants, or the heirs-at-law of said Morgan, or whether they or any of them do, or not, reside in the said State of New York, this defendant is wholly ignorant and calls upon complainants to make proof of the same. This defendant however denies, if the said Morgan did decease leaving heirs-at-law and the persons of any or either of them named in said bill are in fact his descendants and heirs-at-law, that the legal title to the land described in said bill, ever in any manner vested, or is now vested in trust, or otherwise in such heirs-at-law, or that such heirs-at-law or any or either of them ever had or now have, or has, any interest whatever in the same or in any part thereof.

186 And this defendant further answering says that it has been informed and believes the same to be true as alleged in said bill of complaint that said Caldwell, Brace and Morgan assuming to act in the capacity of trustees of said Land Company which had closed its business and in fact dissolved as aforesaid more than 25 years prior thereto, did on or about the 23rd day of March, A. D. 1836, execute in form to Thomas Lloyd a quit claim deed purporting to convey to him the legal interest, which they might then have, as trustees of said Land Company in a small portion of the lands described in said bill, and that they executed said quit claim without any previous division or sale of the lands therein described by the directors of said company and without the direction of said directors. But this defendant denies that they executed the same without any consideration; to the contrary thereof this defendant has been informed and believes the same to be true, that said Lloyd paid to said trustees the sum of \$900.00 or thereabouts, as a consideration for the execution of said deed, but whether said trustees did, or did not, appropriate to their own use such consideration and not account for the same to the members of said company then surviving and to the heirs or assigns of such as had then deceased, or whether said deed was or not, executed in pursuance of a fraudulent combination entered into between said trustees and said Lloyd to cheat and defraud, the defendant is wholly ignorant. But this defendant denies that said Lloyd in procuring said deed intended to defraud complainants or their pretended co-tenants. This defendant however admits that Exhibit "D" attached to said bill of complaint is a copy of said quit claim deed, and that the same is recorded in Book 27, page 204, of the records of said Cuyahoga

County. And this defendant further answering says, it has been informed and believes the same to be true, as alleged in said bill of complaint, that said Thomas Lloyd deceased in the year 1842, leaving the several persons named in said bill his children and heirs-at-law; that the administrators of said Thomas subsequent to his decease, in pursuance of some orders or pretended orders of the Court of Common Pleas of the said County of Cuyahoga, executed in form, to William B. Lloyd, conveyances of the lands described in the quit claim deed of said trustees; that such conveyances are recorded in the record books of said Cuyahoga County and that said William B. Lloyd after the execution of said conveyances claimed by virtue thereof to be seized of the legal title of the lands therein described.

And this defendant further answering says that said defendant for the purposes and in the manner hereinafter mentioned and under a legal authority so to do, derived from the source and in the manner hereinafter set forth is in the occupancy of the following described parcels of the land mentioned in said complainant's bill of complaint, to-wit, one of said parcels is described and bounded as follows: "Beginning at a point twenty-five feet from the water's edge of the east pier of Cleveland harbor, 282 feet northerly of the south line of Bath street, measuring parallel with the water's edge of said pier the bearing of which is N. 30° west. Thence north 66° East parallel with the south line of Bath Street 300 feet to the periphery of a circle the radius of which is 650 feet converging towards the Cuyahoga River. Thence along the periphery of said circle to a point 150 feet north 66° East of the water's edge of said pier. Thence southwesterly on a line parallel with said south line of Bath Street 125 feet and thence southerly parallel with the water's edge of said pier and 25 feet therefrom to the place of beginning." And the other of said parcels is described and bounded as follows, to-wit: "Beginning at a point on the west line of Water Street, produced or extended 550 feet northerly from the south side of Bath street. Thence westerly to the center line of Spring Street extended on a line parallel with the south line of Bath Street. Thence northwesterly on said center line of Spring Street extended 3,000 feet. Thence easterly in a line parallel with the south line of Bath Street to the west line of Water Street extended to the place of beginning." And the defendant further answering says that the parcel lastly described is now wholly covered by the waters of Lake Erie and entirely below low water mark in said lake and has been so ever since the purchase of said Western Reserve by said Land Company as aforesaid and prior thereto. And this defendant submits that neither the said Connecticut Land Company nor said trustees or their heirs or assigns, or the heirs or assigns of any or either of them, ever had, or now have or has any title whatever to said last mentioned parcel so covered by water and that the title to the same both legal and equitable and the sole control thereof have, at all times, been and still are, in the public for the sole use and benefit of the public.

And this defendant further answering denies that it occupies or

claims to occupy the aforesaid parcel, through or under, in any manner, the said William B. Lloyd, or his assigns or the other heirs at law of said Thomas Lloyd, or their assigns or said Thomas Lloyd himself, or under, or by virtue of the quit claim deed to said

188 Thomas from said trustees, or that this defendant now holds, or ever held, any title, or interest whatever in said two parcels of land, or either of them, in trust for complainants, or any or either of them, or that this defendant has received a large amount of rents and issues from said lands, as alleged in said bill of complaint. But this defendant admits that it does now refuse and has at all time hitherto refused to recognize said complainants as having any legal or equitable title whatever in said two parcels or either of them, and that it has, at all times refused and still does refuse to account in any manner to complainants for the use of said parcels or either of them. And this defendant further answering says, that as early as the year 1793 the said Connecticut Land Company being desirous of founding a city on the said Western Reserve at the mouth of the said Cuyahoga River and on the easterly side thereof, caused the northwesterly portion of the lands upon which the said City of Cleveland is now situate by Seth Pease and Augustus Porter, surveyors of said company and authorized agents thereof for such purpose, to be surveyed and laid off into town lots, streets, lanes and public grounds, and the town so surveyed and laid out to be named "The City of Cleveland," and a map or plat thereof, and minutes of such survey to be made by said Pease and Porter (commonly called the map and minutes of Pease and Porter) particularly setting forth the lots, streets, lanes and public grounds, and describing the same by courses, boundaries and extent, a copy of which map, is hereunto attached, marked "A" and for a copy of the minutes of said Pease and Porter reference is had to Exhibit D attached to the answer filed in this cause by the Cleveland, Columbus & Cincinnati Railroad Company, and made a part of this answer; that upon said map, said company caused the lots so laid off to be numbered progressively from 1 to 220 inclusive, and all the lands described in said bill of complainant, lying west of the west line of Water Street and north of the north line of lot No. 191 and of the said Cuyahoga River and south of the waters of Lake Erie as indicated on said map to be laid off as public ground and designated as "Bath Street" (the same having no other northerly boundary than the waters of said lake) said company intended thereby, to give, and in fact giving thereby and dedicating to the public all the lands so designated upon said map, as Bath Street, for the purpose of a public street or way communicating with the navigable waters of said Lake Erie and said river. And for such other

189 commercial purposes as the convenience and well being of the future inhabitants of the said city of Cleveland might require a public ground situate as Bath Street was and is in reference to said lake and river to be used; that in the year, A. D. 1801, said Connecticut Land Company by one Amos Spafford, a surveyor and authorized agent of said company for such purpose caused the streets, lanes and public grounds of the said city of Cleveland, sur-

veyed and platted as aforesaid in 1796 and '7 to be surveyed and minutes thereof to be retaken, and a second plat to be made of the lots, streets, lanes and public grounds in said city, (which was and is substantially a copy of the aforesaid map of Pease and Porter) commonly called the plat and minutes of Amos Spafford of the City of Cleveland, a copy of which plat and minutes is hereto attached marked B and made part of this answer. And that upon said last mentioned plat (as upon the plat of said Pease and Porter) said company again caused all the lands lying west of the west line of said Water Street and north of the north line of said lot No. 191 and the Cuyahoga River and south of the waters of Lake Erie to be designated as "Bath Street," thereby affirming the dedication and appropriation of the same made as aforesaid in the year 1796 to the public for the purposes aforesaid. And this defendant further answering says, that said Connecticut Land Company having allotted and platted the said City of Cleveland as aforesaid, proceeded to sell the lots designated in said plats in reference thereto and long since sold out and otherwise disposed of all the lots in said plats and ceased to have any interest therein; that the trustees of said company long since executed conveyances of the same to the purchasers thereof distinctly recognizing the existence and validity of the survey and plat of said Spafford in their conveyances of the lots contiguous to said Bath Street; that the purchasers of said lots took possession of the same and made valuable improvements thereon in reference to said plat and said Bath Street, and they and their assigns have ever since, for a period of more than half a century occupied and improved said lots, and still do occupy and enjoy the same in reference to said plat; and that from the making of the said Spafford map, as aforesaid, until the present time said Land Company and their assigns, so long as they continued to have any interest in the said lands embraced in said plat and the inhabitants of said city of Cleveland, have at all times recognized and still do recognize the plats and maps of said Pease and Porter and

190 of said Spafford as controlling evidence of the boundaries of lots, streets, lanes and public grounds, designated therein.

And this defendant answering says, that in obedience to the requirements of an act of the Legislature of the Territory northwest of the Ohio passed December 6, A. D. 1800, entitled "An Act to provide for the recording of town plats," and to be found in Volume 1, Chase's Ohio Statutes, Chapter 130, page 291, and which is made part of this answer, said Land Company caused the map and minutes of said Spafford, as it had before caused those of said Pease and Porter, to be deposited in the office of the Recorder, of the said County of Trumbull (in which county the lands described in said plat were then situate) for record and the same as this defendant has been informed and believes to be true, were, on or about the 15th day of February A. D. 1802 duly recorded by the recorder of said county although the record of said map has long since been accidentally lost, or destroyed, and cannot now be found. And this defendant further answering says, that as early as the year A. D. 1800, said Bath Street as delineated on the plat of said Spafford

having for its northern boundary the waters of Lake Erie as aforesaid, with the full knowledge and consent of said Land Company was opened, occupied and traveled as a public street or way and from thence hitherto with the full knowledge and uninterrupted acquiescence of said Company, the trustees thereof and their respective heirs and assigns, it has been at all times regarded, used and occupied by the inhabitants of the said City of Cleveland and the public generally without molestation, not only as a public way in said city communicating with said lake and river (but also (and of late years extensively so) as a quay) or public landing for persons and property transported and to be transported upon the waters of Lake Erie and still is so regarded, used and occupied by the inhabitants of said city, and that for more than a quarter of a century prior to the year 1827 when the channel of said river, as laid down on the map of said Spafford was changed to its present location by the United States Government, said Bath Street was the only public highway used, or which could be used, by the inhabitants of said city and public for the transportation of persons or property, by vehicles of any description to or from said lake or river. And this defendant further answering says; that by an act of the General

Assembly of the State of Ohio entitled "An Act to incorporate the Village of Cleveland in the County of Cuyahoga" 191
passed December 23, A. D. 1814, and to be found in Volume 13, page 17, of the Laws of said State, and which is made part of this answer, so much of the plat of said Spafford as lies northward of Huron Street was erected into a village corporate to be known by the name of "The Village of Cleveland" and the corporation thus created, invested with the powers therein mentioned, which corporation continued to exist until superseded as hereinafter stated; that by another act of the same General Assembly entitled "An Act to incorporate the City of Cleveland in the county of Cuyahoga," passed March, A. D. 1836, and to be found in Volume 34, page 271, of the local laws of said State and which is also made part of this answer, all the lands embraced in the plat by said Spafford lying eastwardly of the present channel of the Cuyahoga River, together with additional territory was declared to be a city and the inhabitants thereof created a body politic and corporate by the name and style of "The City of Cleveland" and invested with such powers and trusts touching the streets, alleys, public grounds and harbor within the corporate limits thereof, as are specified in said act, which powers and trusts have from thence hitherto been and still are exercised and executed by said corporation, and that said Bath Street at all times since the passage of said acts of incorporation respectively, with the knowledge and acquiescence of said Land Company, its Trustees and their respective heirs and assigns, has been claimed, regarded, controlled and regulated by the inhabitants and corporate authorities of said village and city as one of the streets and public grounds thereof and still is so claimed, regarded and governed by the corporate authorities of said City of Cleveland, and the use of the same as such had never been in any wise vacated, or abandoned by said city or its inhabitants; and this defendant avers that by

reason of the premises aforesaid, said Bath Street is in fact one of the public streets and grounds of said city."

Whereupon the defendants objected to the reading of the next paragraph of said answer; which objection was sustained by the court; to which ruling of the court excluding said paragraph the plaintiff then and there excepted for the following reasons, to-wit: First, for the reason that it is part of the statement of the Cleveland & Pittsburg Railroad Company, and as an admission of a fact it is competent in this case. Second, on the ground that the evidence excluded is evidence of an admission tending to show the intention of the Cleveland & Pittsburg Railroad Company as to the occupation of the street at the time the answer was filed and as to whether or not there had been an abandonment of the street by the City of Cleveland. Third, because the evidence excluded tends to show the attitude of the Cleveland & Pittsburgh Company towards the land included in Bath Street at the time the answer was filed, and offered to prove the contents of the said paragraph as follows:

"That the legal title thereof, as this defendant is advised by counsel learned in the law is now vested either in the said City of Cleveland or the public in trust for the uses and purposes intended as aforesaid by said Connecticut Land Company in dedicating the same as aforesaid to the public, and that the public has the right to use the same for such purposes without molestation from complainants."

And this defendant further answering says, that after the channel of the Cuyahoga River, as delineated on the plat of said Spafford was changed to its present location as aforesaid, the Government of the United States (on the easterly side thereof) at its mouth (to render said river accessible to water craft navigating Lake Erie) constructed permanent improvements extending into the said lake more than a quarter of a mile from the northerly or water line of said Bath Street,—as it was when said channel was changed,—that by reason of said improvements and lesser ones made by the inhabitants and corporate authorities of said city at great expense, the encroachment of said lake upon said Bath Street, which at times had threatened wholly to submerge the easterly portion thereof at and in the vicinity of said Water Street, and render the same useless for the purposes to which it was dedicated as aforesaid, have been stopped and that part of said Bath Street easterly of, at and in the vicinity of the east pier of said river has been increased in width by slow and imperceptible alluvial formations so much so that the parcel of said Bath Street hereinbefore described as not covered by the waters of Lake Erie and used by this defendant as hereinafter mentioned has been wholly formed by accretion and lies northerly of the water line of said street, as it was when said channel was changed, and that notwithstanding said Bath Street has thus increased in width, and shall continue gradually to increase in width, the rapid growth of the said city of Cleveland and the increased and increasing wants of
 193 its commerce and of its inhabitants more than keep pace with the increase of said street, and imperatively require every part and parcel thereof, enlarged as it is, to be used for the com-

mercial purposes to which it was devoted, as aforesaid, by the original proprietors of said Western Reserve, and will ever require the same however much it may be enlarged by the means aforesaid to be thus used and appropriated.

And this defendant further answering says that it is a body politic and corporate duly organized under and created by two several acts of the State of Ohio, the one an act entitled "An Act to incorporate the Cleveland & Pittsburgh Railroad Company" passed March 14th, A. D. 1836, and to be found in Vol. 34, p. 576, of the local laws of said State, and the other an act entitled "An Act to revise and amend the act entitled an act to incorporate the Cleveland & Pittsburgh Railroad Company," passed March 11, A. D. 1845, and to be found in Vol. 43, p. 401, of the local laws of said State, both of which acts and the amendment thereto are made part of this answer, and has been such body politic and corporate from the 19th day of October, A. D., 1845, and fully empowered by said acts to construct, maintain and work a double or single railway to commence at a convenient place in the city of Cleveland and thence in the most direct, practicable and least expensive route to the Ohio River at the most suitable point for the transportation of persons and property, to appropriate lands and materials for such purpose, and, when necessary, in the construction of said railway including depot and station accommodations, to cross and occupy public ways and grounds, which railway this defendant in accordance with its said charter has constructed and is now successfully operating to the great benefit of the public at large and especially by the inhabitants of the said city of Cleveland; that, to fully secure to the public the benefits contemplated in the charter of this defendant in the working of said railway, it being necessary to connect the same with the waters of said lake and river within the limits of said Bath street, for the delivery of freight and passengers and the exchange of freight and passengers with water craft navigating said lake and the same being also a suitable point for the commencement of said railway within said city, this defendant under a license obtained from said city, has laid down in a proper manner and not otherwise its railway tracks upon such part of said Bath street situate between said Water street and the present channel of said river, as was necessary and had been designated by said city for the purpose, so as

194 to connect its said railway with the waters of said lake and river, as is more fully shown by Exhibit C hereto attached and made part of this answer. And this defendant is now and for some time past has been running its rail-carriages upon the tracks so laid down to and from said river and lake for the purpose aforesaid, in a prudent manner, at reasonable times and so as to work no inconvenience to other legitimate uses of said street. And this defendant further answering says that to make said exchanges with a due regard to the safety of persons and property it was indispensably necessary to provide suitable railway fixtures and improvements upon some part of said Bath street and for such purpose and for such purpose only this defendant with the consent of said city has, also, constructed and is now using and maintaining in a reasonable

manner upon that portion of said street first hereinbefore mentioned as in the occupancy of this defendant, necessary railway fixtures and improvements and such only. And this defendant further answering says that the harbor accommodations afforded by said river being inadequate to the commercial wants of the said inhabitants of the city of Cleveland and the channel of said river contiguous to said Bath street being also too small and otherwise insufficient to admit of the safe and convenient ingress and egress to and from the same of the largest class of water craft navigating said lake, to effect conveniently and safely exchanges of passengers and freight with such craft, it was necessary for this defendant (and it has so done, with the consent also of said city) to construct in a suitable manner and to a depth of water sufficient for the safe approach thereto of such craft, a wharf upon the parcel of land hereinbefore secondly described as in the occupancy of this defendant and wholly covered by water, and to lay down thereon branch tracks from the main track of this defendant's railway to the northerly termination of said wharf and this defendant is now and for some time past has been, for the purpose of making such exchanges working in a prudent manner, and without inconvenience to the public its railway carriages upon said branch tracks, and this defendant has also, when necessary so to do, used portions of said wharf as a place of temporary deposit for property awaiting transportation.

And this defendant submits and insists that it has the right as a component part of the public to occupy with the consent of said city, said Bath street in the manner and for the purposes aforesaid; that such use is a great public accommodation and not incompatible

with the purposes intended by said Connecticut Land Company in dedicating the same to the public as aforesaid, but
195 consistent therewith, and that the City of Cleveland in permitting this defendant thus to use a limited portion of said street, and thereby distributing its legitimate use so as to best subserve the convenience and business interests of its inhabitants and the rest of the public has committed no breach of trust, nor violated any public or private right, but performed rather a duty which it owed as well to the forecast of said Land Company as to the public.

And -his defendant further answering says that the heirs of Frederick Harlach named in said bill of complaint, Daniel P. Rhodes and one Hezekiah Camp, pretended to have some claim to said Bath street as assignee, or otherwise of said William B. Lloyd and to be entitled to some improvements situate thereon, and threatening by litigation or otherwise to embarrass this defendant in using said street as aforesaid, this defendant although well knowing that such claim was wholly unfounded, and not intending thereby to recognize its validity, yet to buy its peace and avoid all annoyance from and controversy with them touching such use of said street, for a valuable consideration procured them to quit claim to this defendant their pretended claims to the two parcels aforesaid, hereinbefore described and now in the occupancy of this defendant as aforesaid and the improvements situate thereon.

And this defendant further answering submits if it is mistaken

in the opinion hereinbefore expressed that the legal title of said Bath street is now vested in said City of Cleveland, or in the public in trust for the inhabitants of said city and the same is in fact held by said Lloyd or his assigns that the parties, who hold the same whoever they may be, have no beneficial interest in said street, and hold the legal title thereof in trust merely for the uses and purposes intended by said Land Company in dedicating the same to the public as aforesaid and ought not to be permitted in a court of equity to disturb or molest this defendant or the rest of the public in the legitimate use of the same.

And this defendant further answering says that the two-acre lots mentioned in said bill of complaint are numbered respectively from 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 186, 187, 188, 189 and 190, and situate on the north side of Lake street in said city of Cleveland, as laid out and platted by said Pease and Porter and said Spafford, extend to Lake Erie and are bounded on the north by waters of said lake and no lands exist between the north boundary of said lots and the waters of said lakes, as more fully appears by the copies of said plats as hereto attached; that prior to the year A. D. 1805, 196 said Land Company sold and disposed of all of said lots to diverse persons, and the trustees thereof conveyed the same to such persons bounding each and every of said lots on the north by said lake, and the grantees of said lots and their assigns still own the same and have from thence hitherto claimed and still do claim title to the waters of said lake, and have used, occupied and enjoyed the same to said lake, and still do, and that this defendant having procured the right of way for that purpose from the proprietors of said lots, has constructed and is now maintaining its railway on the northerly side of said lots and within the boundaries thereof and is now occupying for a like purpose and is the owner in fee of the north parts of lots Nos. 3, 4, 5, 6, 7, respectively and claims title thereto on the north to the waters of said lake.

And this defendant further answering insists also inasmuch as the pretended equitable right of complainants set up in said bill to Bath street, if originally well founded, accrued to complainants or those through whom they claim title in the year 1795 and more than 54 years have elapsed since such equitable rights fully ripened and ought to have been asserted against said city, and its inhabitants have as aforesaid, used and occupied without molestation, claiming the right so to do, said Bath street as hereinbefore mentioned with the full knowledge of complainants and those through whom they claim title, and inasmuch as said city has expended large sums in improving said Bath street for the public accommodation and private property contiguous to, and in the vicinity of said street, has been improved and occupied in reference thereto under the bona fide belief induced by the silence and acquiescence of complainants and those through whom they claim title, and that the same was public property for the purposes aforesaid inasmuch as the withdrawal of said street from public use at this late day would materially affect the public accommodation and work irreparable

injury to private rights, that complainants and those through whom they claim, have slept too long upon their alleged rights in said Bath street and have been guilty of too gross laches to be entitled in a court of equity to any relief whatever in the premises. And this defendant respectfully asks the same benefit of the lapse of time in its defense on the hearing of this cause, as if it had plead the same specially in bar of the relief prayed for in said Bill of Complaint. And this defendant further answering says that having fully answered said complainants' bill, it prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

In testimony whereof the Vice President of said Cleveland & Pittsburgh Railroad Company has hereunto affixed his signature and the seal of the said company this 15th day of June, 1854.

W. S. C. OTIS, [SEAL.]

Vice Pres. of C. & P. R. R. Co.

MOSES, KELLY, BOLTON &

GRISWOLD,

Solicitors of Defendant C. & P. Railroad Co.

It appearing that the exhibits to the foregoing answer and to those which follow in this record in the Holmes case have already been offered in evidence, it is stipulated and agreed between the parties that they may be considered as offered as part of each answer, but need not be recopied in so far as they are duplicates.

And further to maintain the issues on its part, the plaintiff offered in evidence the joint answer of the Cleveland & Mahoning and Cleveland & Toledo Railroads. (To which the defendants objected.)

The Court: They were the predecessors of the Lake Shore and the Cleveland & Pittsburgh?

Mr. BAKER: The Cleveland & Pittsburgh was the original Cleveland & Pittsburgh Railroad; but the Cleveland & Toledo and the Cleveland & Mahoning are both predecessors of the Lake Shore. (Which objection was overruled by the court; to which ruling of the court the defendants then and there severally excepted.)

Said answer is as follows:

July Term, 1860.

The Joint and Several Answer of The Cleveland & Mahoning Railroad Company, and of The Cleveland & Toledo Railroad Company, to the Bill of Complaint filed against them and others by Julius C. Sheldon and others, and now pending and undetermined in the Circuit — of the United States for the District of Ohio.

These defendants reserving to themselves all right of exception to said Bill of Complaint, for answer thereto, or unto so much, or said parts thereof as they are advised is, or are material for them

to make answer unto say: They deny that complainants are owners in equity, or tenants in common with any person or persons known or unknown, of the premises described in Complainants' said Bill of Complaint, or that Complainants, or any or either of them, have or has any interest or title whatever either legal or equitable, as

198 tenants in common or otherwise in said premises or any part thereof, as alleged in said Bill of Complaint. And these

defendants further answering say, that the greatest part of the territory described in said bill of complaint is situated in Lake Erie, and below low water mark in said Lake and entirely covered by the navigable waters thereof and that said Lake is situate between the United States and the Colonial possessions of Great Britain and is a great public highway, navigable and navigated by foreign and domestic ships of all burdens, and has been ever since the government of the United States existed and prior thereto and still is extensively used by the public for the purposes of the foreign and domestic trade and commerce of the country and is essential and indispensable to the carrying on of such trade and commerce. These defendants, however, admit that so much of the territory described in said Bill of Complaint, as in the year A. D. 1795 lay southerly of low water mark in Lake Erie was part and parcel of the purchase made in the year 1795 of the State of Connecticut by a company of persons called the "Connecticut Land Company" associated together by articles of agreement and association bearing date on or about the 5th day of September A. D. 1795 and conveyed by the original proprietors of said Company to John Caldwell, Jonathan Brace and John Morgan and to the survivors and survivor of them and the heirs of such survivor forever in trust for the proprietors of said Land Company and their heirs and assigns by deed dated on or about the 5th day of September, A. D. 1795. But these defendants deny that the title to so much of the territory described in said Bill of Complaint as in the year 1795 lay northerly of low water mark in said lake and covered by its waters was ever at any time vested in the said State of Connecticut, or that such part of said territory was in the year 1795, or at any other time, either before or since, purchased by said Connecticut Land Company of said State, or conveyed, or intended to be conveyed by said State to said Company or that the State of Connecticut could, had it intended so to do, have conveyed to said Land Company any title whatever to such part of said territory. To the contrary thereof these defendants say, that the purchase made by said Land Company of said State was a purchase of land admitting of actual occupation as such and not a purchase of the waters of Lake Erie, or of the land covered by the navigable waters of said Lake; that the title to and control of so much of said territory as in the year 1795 lay northerly of low water mark in said Lake and covered by its waters, were, when said Land Company purchased the Western

199 Reserve, and received a conveyance thereof from the said State of Connecticut, vested in the Government of the United States, in trust, and not otherwise for the sole use and benefit of the public, and had been so vested from the establishment of

said Government and that said government has never, at any time, sessed to, or otherwise vested in said State of Connecticut or in said Land Company or their heirs, or assigns such title, or control.

And these defendants further answering admit, that the lands described in said Bill of Complaint, are of great value, and that the amount paid to said State of Connecticut by said Land Company for the Western Reserve was twelve hundred thousand dollars, as alleged in said Bill of Complaint. But whether Exhibits B and C respectively are, or not true copies of said articles of association and Trust Deed, these defendants are wholly ignorant and call upon complainants for proof of the same. And these defendants deny that the exhibit filed by said complainants with said bill and marked "A", gives a true description of the premises described in said Bill or that the same is a true representation of the survey of that portion of the City of Cleveland, as made by the order or under the direction of said Connecticut Land Company. These defendants admit, however, that the original lines of the lots marked on said exhibit are correctly drawn so as to meet the waters of said Lake, but they deny that in the original survey of said city there was any other northerly line of Bath Street, either drawn upon the map or run into the survey, than the water line of said Lake. They also deny that the northerly boundary of said two-acre lots adjoining the Lake was the banks, or that it was along the red line drawn on said exhibit as thereon stated but they charge that the only northerly line or boundary, either drawn on the original map or run in such survey, was the water line of said Lake. They also deny that the space indicated on said exhibit as lying northerly of a line drawn through Bath Street, was at the time said survey was made, or that it was at the commencement of this suit, or is now laid out into sixteen lots and that the same are all improved, as it is stated in said Exhibit, or that the same is laid out into any number of lots, or otherwise occupied than as herein stated. And these defendants further answering say that they do not know and have never been informed save by the said Complainants' Bill and cannot set forth as to their belief or otherwise whether the Urial Holmes alleged in said Bill to be the father of Complainant Henry Holmes, was or not, at any time a member of said Connecticut Land Company, nor whether said Urial ever had, or not, any interest whatever in the purchase made as aforesaid of said
200 State of Connecticut, nor whether complainant Henry Holmes is, or not, an heir at law, or sole heir at law of said Urial, nor whether Martin Sheldon mentioned in said Bill, ever had, or not, any interest whatever by purchase, or otherwise, in said Land Company, or in the purchase made or said State as aforesaid, nor whether Julius C. Sheldon is devisee, or not, of said Martin, nor whether the Gideon Granger named in said Bill ever had or not any interest whatever as original proprietor or otherwise in said Land Company, or in the purchase made by said Company of said State; nor whether the complainant Francis Granger is, or not, the surviving executor or trustee of said Gideon. But these defend-

ants deny that Complainants Henry Holmes, Julius C. Sheldon and Francis Granger, or any, or either of them, as tenants in common, or otherwise, ever had, or now have, or has any interest or title whatever, whether acquired by purchase or otherwise, in or to the lands described in said Bill of Complaint, or in any part thereof as alleged in said Bill of Complaint.

And these defendants further answering deny that Hetty B. Hart, of Hartford, Connecticut, or others as heirs-at-law or assigns of Richard W. Hart, or that James Root or Samuel Root of said Hartford, or either of them, or others, as heirs at law, or assigns of Ephriam Root; or that Henry J. Canfield of Mahoning County, Ohio, or any other person or persons as heirs at law of Judson Canfield, or that Frederick A. Boardman of said Mahoning County, or any other person or persons as heirs at law of Elijah Boardman, or that Jared P. Kirtland of Cuyahoga County, Ohio, or any other person or persons as heirs at law or assigns of Turhand Kirtland or that said State of Connecticut as assignee of Pierpont Edwards or Ashur Miller, or either of them, or that the heirs of Samuel P. Lord, or any or either of them, or their assigns, or the assignee or assigns of any or either of them, or that Samuel G. Storrs of Lake County, Ohio, or any other person, or persons, heirs at law of Samuel Storrs late of Connecticut or their assigns, or the assignee or assigns of any, or either of them; or that Aristarchus Champion of the State of New York, or any other person, or persons, the heirs at law of Henry Champion; or that Matthew Richard of Trumbull County, Ohio, and Oren Harmon of Portage County, Ohio, or either of them, as assignee, trustee, or otherwise ever had or now have or has any title, as tenants in common or otherwise, in or to the premises described in said Bill or in any part thereof.

And these defendants further answering say; that they have been informed and believe the same to be true, and aver the
 201 fact so to be, that the articles of association of said Connecticut Land Company contemplated and specially provided and required that all the lands purchased as aforesaid of said State of Connecticut and conveyed by said State to the proprietors of said Company, should be surveyed and laid out into counties, townships and lots and distributed among such proprietors and otherwise disposed of, and that such was the great purpose of said articles—that said Land Company did subsequently to their purchase and in pursuance of their said articles of association proceed to survey and lay out all the lands so purchased of said State into Counties, Townships and lots, and the greater part of such lots and lands were from time to time prior to the year A. D. 1809 distributed by drafts amongst the original proprietors of said Company, and otherwise disposed of, and conveyances of the same were executed by the trustees of said company to the parties entitled thereto; that the last meeting ever held by said company was held at Hartford, in the said State of Connecticut, in the month of January, A. D. 1809, at which meeting, with the view of then fully carrying into execution the provisions of said articles of association, and of bringing to a final close the affairs of said company and of dissolving

said association, said company, amongst other things adopted a resolution in substance as follows, to-wit: "That the company divide in severally all their property consisting of notes, contracts, book debts and lands, by classing the interest of the company into 46 classes and dividing the property of the company as equally as may be into the same number of parts to be drawn for by each class by lot, which drafts shall vest the property in each class which shall draw the same, and be conclusive on the proprietors of each and every class, and no after allowance shall be claimed on account of errors that may have happened in cast, measure, or otherwise, but said division shall be final unless further property belonging to the company be discovered, and each and every person drawing land, or a contract for the sale of land, shall be at the cost of conveying the same, except the signing of the deed of the trustees," which resolution was then and there by said company fully carried into execution by a distribution of all the then remaining lands and property of said company amongst the proprietors of the same, as in and by the record of the proceedings of said meeting will fully and at large appear and to which for greater certainty the defendants crave leave to refer and make part of their answer; and thereupon said company having fully accomplished the purposes of the association, closed its business, dissolved the association and

202 adjourned without day—and these defendants aver that the final disposition thus made by said company of all its affairs and property has from thence to the filing of the complainants' bill, a period of forty years and upwards, remained wholly undisturbed and unquestioned, nor have the proprietors of said company, their heirs or assigns, ever, at any time prior to the filing of said bill, claimed or pretended that all the lands then belonging to said company were not then and there fully distributed and disposed of.

And these defendants further answering admit that for the reasons hereinbefore as well as those hereinafter mentioned, the lands described in said Bill of Complaint were never drawn for, or otherwise apportioned amongst the members of said company. But these defendants deny that either the legal or equitable title to such lands or to any part thereof, was in the year A. D. 1809, or at any time since, or is now in the trustees of said Land Company, or their heirs or assigns, or the heirs or assigns of any or either of them, or in the members composing said company, or any or either of them, or their heirs or assigns, or the heirs or assigns of any or either of them, as alleged in said Bill of Complaint. And these defendants further answering say, that they have been informed and believe the same to be true as alleged in said Bill of Complaint, that the trustees of said company are deceased, and that John Morgan survived his co-trustees; but whether said Morgan at his decease did, or not, leave one Mrs. Glover his sole heir at law, or whether said Morgan did, or not, at his decease leave any heirs at law, or whether the persons named in said Bill as the children and grand-children of Mrs. Glover are, or not, the descendants, or the heirs at law of said Morgan, or whether they or any of them do, or not, reside in the said State of New York, these defendants are

wholly ignorant and call upon complainants to make proof of same. These defendants however deny, if the said Morgan did de cease leaving heirs at law and the persons or any or either of them named in said Bill are in fact his descendants and heirs at law, that the legal title to the land described in said Bill, ever in any manner, vested, or is now vested in trust, or otherwise in such heirs at law, or that such heirs at law or any or either of them ever had or now have, or has, any interest whatever in the same or in any part thereof.

And these defendants further answering say they have been informed and believe the same to be true as alleged in said Bill of Complaint that said Caldwell, Brace and Morgan assuming to act in the capacity of trustees of said Land Company which had closed

its business and in fact dissolved as aforesaid more than 25
203 years prior thereto, did on or about the 23rd day of March,

A. D. 1836, execute in form to Thomas Lloyd a quitclaim deed purporting to convey to him any legal interest, which they might then have, as trustees of said Land Company in a part of the lands described in said Bill, and that they executed said quitclaim without any previous division or sale of the lands therein described by the directors of said company and without the direction of said directors. But these defendants deny that they executed the same without any consideration; to the contrary thereof these defendants have been informed and believe the same to be true, that said Lloyd paid to said trustees the sum of \$900.00 or thereabouts, as a consideration for the execution of said deed, but whether said trustees did, or not, appropriate to their own use such consideration and not account for the same to the members of said company then surviving and to the heirs and assigns of such as had then deceased, or whether said deed was or not, executed in pursuance of a fraudulent combination entered into between said trustees and said Lloyd to cheat and defraud, these defendants are wholly ignorant. But these defendants deny that said Lloyd in procuring said deed intended to defraud complainants or their pretended co-tenants, but this defendant admits that Exhibit D attached to said Bill of Complaint is a copy of said quitclaim deed, and that the same is recorded in Book 27, page 204 of the records of said Cuyahoga County. And these defendants further answering say they have been informed and believe the same to be true, as alleged in said Bill of Complaint, that said Thomas Lloyd deceased in the year 1842, leaving the several persons named in said Bill his children and heirs at law; that the administrators of said Thomas subsequent to his decease, in pursuance of some orders or order of the Court of Common Pleas of the said County of Cuyahoga, executed, in form, to William B. Lloyd, conveyances of the lands described in the quitclaim deed of said trustees; that such conveyances are recorded in the record books of said Cuyahoga County and that said William B. Lloyd after the execution of said conveyances claimed by virtue thereof to be seized of the legal title of the lands therein described.

And these defendants further answering deny that these defendants now hold, or ever held, any title, or interest whatever in

said parcels of land, or either of them in trust for complain-ts, or any or either of them, or that these defendants have received a large amount of rents and issues from said lands, as alleged in said bill of Complaint.

And these defendants further answering say, that as early as the year 1796 the said Connecticut Land Company being desirous of founding a city on said Western Reserve at the mouth of said Cuyahoga River and on the easterly side thereof, caused the northwesterly portion of the lands upon which the said City of Cleveland is now situate by Seth Pease and Augustus Porter, surveyors of said company and authorized agents thereof for said purpose, to be surveyed and laid off into lots, streets, lanes and public grounds, and the town so surveyed and laid out to be named the "City of Cleveland," and a map or plat thereof, and minutes of such survey to be made by said Pease and Porter (commonly called the map and minutes of Pease and Porter) particularly setting forth the lots, streets, lanes and public grounds, and describing the same by courses, boundaries and extent—a copy of which map and minutes is hereunto attached and marked "A" and made a part of this answer; that upon said map, said company caused the lots so laid off to be numbered progressively from 1 to 220 inclusive, and all the lands described in said bill of complaint, lying west of the west line of Water Street and north of the north line of lot No. 191 and of the said Cuyahoga River and south of the waters of Lake Erie as indicated on said map to be laid off as public ground and designated "Bath Street" (the same having no other northerly boundary than the waters of said lake) said company intending thereby to give and in fact giving thereby and dedicating to the public all the lands so designated upon said map, as Bath Street, for the purpose of a public street or way communicating with the navigable waters of Lake Erie and said river, and for such other commercial purposes as the convenience and well being of the future inhabitants of the said City of Cleveland might require a public ground situate as Bath Street was and is in reference to said lake and river to be used—that in the year A. D., 1801, said Connecticut Land Company by one Amos Spafford, a surveyor and authorized agent of said Company for such purpose caused the streets, lanes and public grounds of said City of Cleveland, surveyed and platted as aforesaid in 1796 and '7 to be resurveyed and minutes thereof to be retaken and a second plat to be made of the lots, streets, lanes and public grounds in said city, (which was and is substantially a copy of the aforesaid map of Pease and Porter) commonly called the plat and minutes of Amos Spafford of the City of Cleveland, a copy of which plat and minutes is hereto attached marked B and made a part of this answer and that upon said last mentioned plat (as upon the plat of said Pease and Porter) said company again caused all the lands lying west of the west line of said Water Street and north of the north line of

205 said lot No. 191 and the Cuyahoga River and south of the waters of Lake Erie to be designated as Bath Street, thereby affirming the dedication and appropriation of the same made as aforesaid in the year 1796 to the public for the purposes aforesaid.

And these defendants further answering say, that said Connecticut Land Company having allotted and platted the said City of Cleveland as aforesaid, proceeded to sell the lots designated in said plats in reference thereto and long since sold out and otherwise disposed of all the lots in said plats and ceased to have any interest therein; that the trustees of said company long since executed conveyances of the same to the purchasers thereof, distinctly recognizing the existence and validity of the survey and plat of said Spafford in their conveyances of the lots contiguous to said Bath Street; that the purchasers of said lots took possession of the same and made valuable improvements thereon in reference to said plat and said Bath Street and they and their assigns have ever since, for a period of more than half a century occupied and improved said lots; and still do occupy and enjoy the same in reference to said plat; and that from the making of the said Spafford map, as aforesaid, until the present time said Land Company and their assigns, so long as they continued to have any interest in the lands embraced in said plat and the inhabitants of said City of Cleveland, have at all times recognized and still do recognize the plats and maps of said Pease and Porter and of said Spafford as controlling evidence of the boundaries of lots, streets, lanes, and public grounds, designated therein. And these defendants further answering say, that in obedience to the requirements of an act of the Legislature of the territory northwest of the Ohio passed December sixth, A. D. 1800, entitled "An Act to provide for the recording of town plats," and to be found in Volume 1 Chase's Ohio Statutes, Chapter 130, page 291, and which is made part of this answer, said Land Company caused the map and minutes of said Spafford, as it had before caused those of said Pease and Porter, to be deposited in the office of the Recorder, of the said County of Trumbull (in which county the lands described in said plat were then situate) for record and the same as these defendants have been informed and believe to be true, were, on or about the 15th day of February, A. D. 1802, duly recorded by the recorder of said county although the record of said map has long since been accidentally lost, or destroyed, and cannot now be found. And these defendants further answering say, that as early as the year A. D. 1800, said Bath Street as delineated on the plat of said Spafford having for its northern boundary the waters of Lake Erie as aforesaid, with the full knowledge and consent of said Land Company was opened, occupied and traveled as a public street or way and from thence hitherto with the full knowledge and uninterrupted acquiescence of said company, the trustees thereof and their respective heirs and assigns, it has been at all times regarded, used and occupied by the inhabitants of the said city of Cleveland and the public generally without molestation—not only as a public way in said city communicating with said lake and river (but also and of late years extensively so) as a quay or public landing for persons and property transported and to be transported upon the waters of Lake Erie and still is so regarded, used and occupied by the inhabitants of said city—and that for more than a quarter of a century prior to the year 1827 when the channel of said river, as laid down on the map of said Spafford was changed to its

present location by the United States Government, said Bath Street was the only public way used, or which could be used, by the inhabitants of said city and public for the transportation of persons or property, by vehicles of any description to or from said lake or river. And these defendants further answering say: that by an act of the General Assembly of the State of Ohio entitled "An act to incorporate the Village of Cleveland in the county of Cuyahoga," passed December 23, A. D. 1814 and to be found in Volume 13 page 17 of the Laws of said State, and which is made part of this answer, so much of the plat of said Spafford as lies northwardly of Huron Street was erected into a village corporate to be known by the name of the "Village of Cleveland" and the corporation thus created, invested with the powers therein mentioned, which corporation continued to exist until superceded as hereinafter stated; that by another act of the same General Assembly entitled "An Act to incorporate the City of Cleveland in the county of Cuyahoga," passed March, A. D. 1836, and to be found in Volume 34, page 271, of the local laws of said State and which is also made part of this answer, all the lands embraced in the plat by said Spafford lying eastwardly of the present channel of the Cuyahoga River, together with additional territory was declared to be a city and the inhabitants thereof created a body politic and corporate by the name and style of "The City of Cleveland" and invested with such powers and trusts touching the streets, alleys, public grounds and harbor within the corporate limits thereof, as are specified in said act, which powers and trusts have from thence hitherto been and still are exercised and executed by said corporation, and that said Bath Street at all times since the passage of said acts of incorporation respectively, with the knowledge and acquiescence of said Land Company, its trustees and their respective heirs and assigns, has been claimed, regarded, controlled and regulated by the inhabitants and corporate authorities of said Village and City as one of the streets and public grounds thereof and still is so claimed, regarded, controlled and regulated by the inhabitants and corporate authorities of said village and city, as one of the streets and public grounds thereof, and still is so claimed, regarded and governed by the corporate authorities of the said City of Cleveland and the use of the same as such has never been in any wise vacated, or abandoned by said City or its inhabitants; and these defendants aver that by reason of the premises aforesaid, said Bath Street is in fact one of the public streets and grounds of said city."

Whereupon the defendants objected to the reading of the next paragraph of said answer; which objection was sustained by the court; to which ruling of the Court excluding said paragraph the plaintiff then and there excepted for the following reasons, to-wit: First, for the reason that it is part of the statement of the Cleveland & Pittsburgh Railroad Company, and as an admission of a fact it is competent in this case. Second, on the ground that the evidence excluded is evidence of an admission tending to show the intention of the Cleveland & Pittsburgh Railroad Company as to the occupation of the street at the time the answer was filed and as

to whether or not there had been an abandonment of the street by the City of Cleveland. Third, because the evidence excluded tends to show the attitude of the Cleveland & Pittsburgh Company towards the land included in Bath Street at the time the answer was filed, and offered to prove the contents of the said paragraph as follows:

"That the legal title thereof, as this defendant is advised by counsel learned in the law is now vested either in the said City of Cleveland or the public in trust for the uses and purposes intended as aforesaid by said Connecticut Land Company in dedicating the same as aforesaid to the public, and that the public has the right to use the same for such purposes without molestation from complainants."

The defendants objected to the portion of the answer next following, for the reason that it refers to lands west of the river.

Counsel not agreeing to this, the Court sustained the objection; to which ruling of the Court the plaintiff then and there excepted for the reason that it appears that westerly is a mistake for the word easterly as used in the answer, and offered to prove the contents of the portion ruled out as follows:

208 "And these defendants further answering say, that after the channel of the Cuyahoga River as delineated on the plat of said Spafford, was changed to its present location as aforesaid, the Government of the United States at the mouth of said river (to render it accessible to water craft navigating Lake Erie) constructed permanent improvements extending into said lake more than a quarter of a mile from the northerly or water line of said Bath street as it was when said channel was changed—that by reason of said improvements and lesser ones made by the inhabitants and corporate authorities of said city at great expense, the encroachment of said lake upon said Bath street, which at times had threatened wholly to submerge the easterly portion thereof, at and in the vicinity of said Water street and render the same useless for the purposes to which it was dedicated, as aforesaid, have been stopped and that portion of said Bath street which lies on the westerly side of said piers has been increased in width by slow and imperceptible alluvial formations so that the greater part of said street as it now is on the west side of said piers, has been formed by accretion and lies northerly of the water line of said street as it was when said channel was changed, and that notwithstanding said Bath Street has thus increased in width the rapid growth of the said City of Cleveland and the increased and increasing wants of its commerce and of its inhabitants more than keep pace with the increase of said street and imperatively require every part and parcel thereof, enlarged as it is, to be used for the commercial purposes to which it was devoted as aforesaid by the original proprietors of said Western Reserve—and will ever require the same, however much it may be enlarged by the means aforesaid to be thus used and appropriated."

* * * * *

"And the said Cleveland & Toledo Railroad Company waiving all objection on account of the misnomer under which it has been brought into this court says that it is a body politic and corporate, and that it was originally organized by the name of the Junction Railroad Company under and by virtue of an act of said legislature entitled an act to incorporate the Junction Railroad Company passed March 2, 1846, and the several acts of said legislature amendatory thereto and under and by virtue of certain sections of the act of said legislature entitled "An act regulating railroad companies, passed February 11, 1848, especially the 11th section of the last named act, which sections were duly adopted by said Junction Railroad Company on the — day of — and made part 209 of its charter, all which acts and parts of acts are hereby made a part of this answer.

And the said Cleveland & Toledo Railroad Company further avers that under and by virtue of another act of said legislature entitled an act * * * or or about the month of September, A. D. 1853, it formed a union with The Toledo, Norwalk & Cleveland Railroad Company, and thereby became consolidated with the same under the name of The Cleveland & Toledo Railroad Company, and that under and by virtue of the powers conferred upon it by said several acts and parts of acts before and since such consolidation it has constructed and is now successfully operating its said road extending from the grounds so in its occupation in said Bath Street in said City of Cleveland to the City of Sandusky in Erie County, in said State of Ohio, to the great advantage of the public at large and especially of the inhabitants of said City of Cleveland.

And the said Cleveland & Toledo Rail Road Company further avers that to fully secure to the public the benefits contemplated in its charter in the working of its said road, it being necessary to connect the same with the waters of said lake and river within the limits of said Bath Street, for the delivery of freight and passengers, and the exchange of freight and passengers with other roads, and with water craft navigating said lake and river, and the same being also a suitable point for the terminus of its said road within the limits of said city of Cleveland, this defendant under a license obtained from the authorities of said city has laid down in a proper manner and not otherwise its railway tracks upon said Bath Street, as shown in said diagram and in such manner as to connect its said railway with the waters of said lake and river, and this defendant is now and for some time past has been running its railway carriages upon the tracks so laid down to and from said river for the purpose aforesaid, and so as to work no inconvenience to other legitimate uses of said street, and this defendant further says that to make such exchanges with a due regard to the safety of persons and property, it was indispensably necessary to provide suitable railway fixtures and improvements upon some part of Bath street, and that for such purpose only this defendant with the consent of said City of Cleveland has also constructed, and is now using and maintaining in a reasonable manner the structures for depots and other rail-

road fixtures indicated on said diagram as in the possession of this defendant, all of which are convenient and necessary for its said road.

And these defendants submit and insist that they have the right as a component part of the public to occupy with the consent of said city, said Bath street in the manner and for the purpose aforesaid—that such use is a great public accommodation and not incompatible with the purposes intended by said Connecticut Land Company in dedicating the same to the public as aforesaid, but consistent therewith, and that the city of Cleveland in permitting this defendant thus to use a limited portion of said street, and thereby distributing its legitimate use so as to best subserve the convenience and business interests of its inhabitants and the rest of the public has committed no breach of trust, nor violated any public or private right, but performed rather a duty which it owed as well to the forecast of said land company as to the public.

And these defendants further answering submit if they are mistaken in the opinion hereinbefore expressed that the legal title of said Bath Street is now vested in the said City of Cleveland, or in the public in trust for the inhabitants of said city and the same is in fact held by said heirs of the survivor of said trustees, that the parties, who hold the same whoever they may be, have no beneficial interest in said street, and hold the legal title thereof in trust merely for the uses and purposes intended by said Land Company in dedicating the same to the public as aforesaid and ought not to be permitted in a court of equity to disturb or molest these defendants or the rest of the public in the legitimate use of the same.

And this defendant further answering insists also inasmuch as the pretended equitable rights of complainants set up in said bill to said Bath Street, if originally well founded, accrued to complainants or those through whom they claim title in the year 1795—and more than fifty-four years have elapsed since such equitable rights fully ripened and ought to have been asserted against said city, and its inhabitants have as aforesaid, used and occupied without molestation, claiming the right so to do, said Bath street as hereinbefore mentioned with full knowledge of complainants and those through whom they claim title, and inasmuch as said city has expended large sums in improving said Bath street for the public accommodation and private property contiguous to and in the vicinity of said street has been improved and occupied in reference thereto under the bona fide belief induced by the silence and acquiescence of complainants and those through whom they claim title,—that the same was public property for the purposes aforesaid, and inasmuch as the withdrawal of said street from public use at this late date would materially affect the public accommodation and work irreparable injury to private rights,—that complainants and those through whom they claim have slept too long upon their alleged rights in said Bath street and have been guilty of too gross laches to be entitled in a court of equity to any relief whatever in the premises. And these defendants respectfully ask the same benefit of the lapse of time in their defense on the hearing of this

cause, as if they had plead same specially in bar of the relief prayed for in said Bill of Complaint.

And these defendants having fully answered pray to be hence dismissed, with their reasonable costs wrongfully sustained.

In Witness Whereof the said Cleveland & Mahoning Railroad Company and the said Cleveland & Toledo Railroad Company have hereunto severally affixed their respective corporate seals this 15th day of June, A. D. 1854, at the City of Cleveland.

THE CLEVELAND & MAHONING
RAIL ROAD COMPANY,
By DUDLEY BALDWIN,
V. President. [SEAL.]
THE CLEVELAND & TOLEDO
RAIL ROAD COMPANY,
By S. F. VINTON, President. [SEAL.]

BISHOP, BACKUS & NOBLE,
Solicitors for said Cleveland &
Mahoning Railroad Company.
S. F. VINTON &
MOSES KELLY,
Solrs for Cleveland & Toledo R. R. Co.

And further to maintain the issues on its part, plaintiff offered in evidence the Answer of The Cleveland, Painesville & Ashtabula Railroad Company, counsel for the plaintiff stating that the said Answer is offered as against the Lake Shore Railway Company.

To which the defendants objected, which objection was overruled by the Court, to which ruling of the Court the defendants then and there severally excepted.

Said Answer is as follows:

Circuit Court of the United States for the District of Ohio.

In Chancery. Pending.

JULIUS C. SHELDON et al.

vs.

THE CLEVELAND, PAINESVILLE & ASHTABULA RAIL ROAD COMPANY
et al.

The Separate Answer of the Cleveland, Painesville & Ashtabula Rail Road Company, One of the Defendants to the Bill of Complaint of Henry Holmes, Julius C. Sheldon and Francis Geunger, Complainants.

212 This defendant reserving to itself all rights of exception to said Bill of Complaint, for answer thereto, or unto so much, or such parts thereof as it is advised is, or are material for it to make answer unto says: It denies that Complainants are owners in equity, or tenants in common with any person or persons

known or unknown, of the premises described in Complainants' said Bill of Complaint, or that Complainants or any, or either of them, have or has any interest or title whatever either legal or equitable, as tenants in common or otherwise in said premises or any part thereof, as alleged in said Bill of Complaint. And this defendant further answering says that the greatest part of the territory described in said Bill of Complaint is situated in Lake Erie, and below low water mark in said lake and entirely covered by the navigable waters thereof and that said Lake is situate between the United States and the Colonial possessions of Great Britain and is a great public highway, navigable and navigated by foreign and domestic ships of all burdens, and has been ever since the government of the United States existed and prior thereto and still is extensively used by the public for the purposes of the domestic and foreign trade and commerce of the country and is essential and indispensable to the carrying on of such trade and commerce. This defendant, however, admits that so much of the territory described in said bill of complaint, as in the year A. D. 1795 lay southerly of low water mark in Lake Erie was part and parcel of the purchase made in the year 1795 of the State of Connecticut by a company of persons called "The Connecticut Land Company" associated together by articles of agreement and association bearing date on or about the 5th day of September, A. D. 1795 and conveyed by the original proprietors of said Company to John Caldwell, Jonathan Brace and John Morgan and to the survivors and survivor of them and the heirs of such survivor forever in trust for the proprietors of said Land Company and their heirs and assigns by deed dated on or about the 5th day of September, A. D. 1795. But this defendant denies that the title to so much of the territory described in said Bill of Complaint as in the year 1795 lay northerly of low water mark in the said Lake and covered by its waters was ever at any time vested in the said State of Connecticut, or that such part of said territory was in the year 1795, or at any other time, either before or since, purchased by said Connecticut Land Company of said State of Connecticut, or conveyed, or intended to be conveyed by said State of Connecticut to said Company or that said State could,

213 had it intended so to do, have conveyed to said Land Company any title whatever to such part of said territory. To the contrary thereof this defendant says, that by the purchase made by said Land Company of said State, was a purchase of land admitting of actual occupation as such and not a purchase of the waters of Lake Erie, or of land covered by the navigable waters of said Lake; that the title to and control of so much of said territory as in the year 1795 lay northerly of low water mark in said Lake and covered by its waters, were, when said Land Company purchased the Western Reserve, and received a conveyance thereof from the said State of Connecticut, vested in the Government of the United States, in trust, and not otherwise for the sole use and benefit of the public, and had been so vested from the establishment of said government and that said government has never, at any time, ceded to, or otherwise vested in said State of Connecticut or in said Land Company or their heirs or assigns such title, and control.

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And this defendant further answering admits, that the lands described in said Bill of Complaint, are of great value and that the amount paid to said State of Connecticut by said Land Company for the Western Reserve was Twelve Hundred thousand dollars, as alleged in said Bill of Complaint. But whether Exhibits B and C respectively are, or not true copies of said "articles of association" and "trust deed," this defendant is wholly ignorant and calls upon complainants for proof of the same. But this defendant denies that the "exhibit" filed by said complainants with said Bill and marked "A," gives a true description of the premises described in said Bill or that the same is a true representation of the survey of of that portion of the City of Cleveland, as made by the order and under the direction of said Connecticut Land Company. This defendant admits, however, that the original lines of the lots marked on said exhibit are correctly drawn so as to meet the waters of said lake, but it denies that in the original survey of said city there was any other northerly line of Bath street, either drawn on the map or run in the survey, than the water line of said lake. It also denies that the northerly boundary of said two-acre lots adjoining the lake was the bank, or that it was along the red line drawn on said exhibit as thereon stated but it charges that the only northerly line or boundary either drawn on the original map or run in such survey, was the water line of said Lake. It also denies that the space indicated on said exhibit as lying northerly of a line thereon drawn through Bath street, was at the time said survey was made or that it was at the commencement of this suit, or is now laid out into sixteen lots and that the same are all improved, as it is stated in said

214 Exhibit, or that the same is laid out into any number of lots, or otherwise occupied than as herein stated. And this defendant further answering says that it does not know and has never been informed save by the said Complainants' Bill and cannot set forth as to its belief or otherwise whether the Uriel Holmes alleged in said Bill of Complaint to be the father of Complainant Henry Holmes, was or not, at any time a member of said Connecticut Land Company or whether said Uriel ever had or not, any interest whatever in the purchase made as aforesaid of said State of Connecticut, nor whether complainant Henry Holmes is, or not, an heir at law, or sole heir at law of said Uriel, nor whether Martin Sheldon mentioned in said Bill, ever had, or not, any interest whatever by purchase or otherwise, in said Land Company, or in the purchase made of said State as aforesaid, nor whether Julius C. Sheldon is devisee, or not, of said Martin, nor whether the Gideon Granger named in said Bill ever had or not any interest whatever as original proprietor or otherwise in said Land Company, or in the purchase made by said Company of said State; nor whether the complainant Francis Granger is, or not, the surviving executor and trustee of said Gideon. But this defendant denies that complainants Henry Holmes, Julius C. Sheldon and Francis Granger, or any, or either of them, as tenants in common, or otherwise, ever had, or now have, or has any interest or title whatever, whether acquired by purchase or other-

wise, in or to the lands described in said Bill of Complaint, or in any part thereof as alleged in said Bill of Complaint.

And this defendant further answering denies that Hetty B. Hart, of Hartford Connecticut, or others as heirs-at-law or assigns of Richard W. Hart, or that James Root and Samuel Root of said Hartford, or either of them, or others, as heirs at law, or assigns of Ephriam Root; or that Henry I. Canfield, of Mahoning County, Ohio, or any other person or persons as heirs at law of Judson Canfield, or that Frederick A. Boardman of said Mahoning County, or any other person or persons as heirs at law of Elijah Boardman, or that Jared P. Kirtland of Cuyahoga County, Ohio, or any other person or persons as heirs at law or assigns of Turhand Kirtland or that said State of Connecticut as assignee of Pierpont Edwards and Asher Miller, or either of them, or that the heirs of Samuel P. Lord, or any or either of them, or their assigns, or the assignee or assignees of any or either of them, or that Samuel G. Storrs of Lake County, Ohio, or any other person, or persons, heirs at law of Samuel

Storrs late of Connecticut or their assigns, or the assignee or
215 assigns of any, or either of them; or that Aristarchus Champion of the State of New York, or any other person, or persons, the heirs at law of Henry Champion; or that Matthew Richard of Trumbull County, Ohio, and Orrin Harmon of Portage County, Ohio, or either of them, as assignee, trustee, or otherwise ever had or now have or has any title whatever, as tenants in common or otherwise, in or to the premises described in said Bill or in any part thereof.

And this defendant further answering says; that it has been informed and believes the same to be true, and avers the fact so to be, that the articles of association of said Connecticut Land Company contemplated and specially provided and required that all the lands purchased as aforesaid of said State of Connecticut and conveyed by said State to the proprietors of said Company, should be surveyed and laid out into counties, townships and lots and distributed among such proprietors and otherwise disposed of, and that such was the great purpose of said articles. That said Company did subsequently to their purchase and in pursuance of their said articles of association proceed to survey and lay out all the lands so purchased of said State into counties, townships and lots, and the greater part of such lots and lands were from time to time prior to the year A. D., 1809 distributed by drafts amongst the original proprietors of said Company, and otherwise disposed of, and conveyances of the same were executed by the trustees of said company to the persons entitled thereto; that the last meeting ever held by said Company was held at Hartford, in the said State of Connecticut, in the month of January, A. D. 1809, at which meeting, with the view of then fully carrying into execution the provisions of said articles of association, and of bringing to a final close the affairs of said Company and of dissolving said association, said Company, amongst other things adopted a resolution in substance as follows, to wit: that the company divide in severalty all their property consisting of notes, contracts, book debts and lands, by classing the interests of the

Company into 46 classes and dividing the property of the Company as equally as may be into the same number of parts to be drawn for by each class by Lot, which drafts shall vest the property in each class which shall draw the same, and be conclusive on the proprietors of each and every class, and no after allowance shall be claimed on account of any errors that may have happened in cast, measure or otherwise, but said division shall be final unless further property belonging to the Company be discovered, and each and every person drawing land, or a contract for the sale of land, shall be at the cost of conveying the same, except the signing of the deeds of the trustees," which resolution was then and there by the

216 said Company fully carried into execution by a distribution of all the then remaining lands and property of said Company among the proprietors of the same, as in and by the Record of the proceedings of said meeting will fully and at large appear and to which for greater certainty this defendant prays leave to refer and make part of its answer; and thereupon said Company having fully accomplished the purposes of the association, closed its business, dissolved the association and adjourned without day. And this defendant avers that the final disposition thus made by said Company of all its affairs and property has from thence to the filing of the Complainants' Bill, a period of forty years and upwards, remained wholly undisturbed and unquestioned, nor have the proprietors of said Company, their heirs or assigns, ever, at any time prior to the filing of said Bill claimed or pretended that all the lands then belonging to said company were not then and there fully distributed and disposed of, and this defendant denies that any further property of said Company has since been discovered.

And this defendant further answers admits, that for the reasons hereinbefore as well as those hereinafter mentioned, the lands described in said Bill of Complaint were never drawn for, or otherwise apated amongst the members of said Company. But this defendant denies that either the legal or equitable title to such lands or to any part thereof, was in the year A. D. 1809, or at any time since, or is now in the Trustees of said Land Company, or their heirs or assigns, or the heirs or assigns of any or either of them, or in the members composing said Company, or any or either of them, or their heirs or assigns, or the heirs or assigns or any or either of them, as alleged in said Bill of Complaint. And this defendant further answering says, that it has been informed and believes the same to be true as alleged in said Bill of Complaint, that the Trustees of said Company deceased, and that John Morgan survived his co-trustees but whether said Morgan at his decease did, or not, leave one Mrs. Glover his sole heir at law, or whether said Morgan did, or not, at his decease leave any heirs at law, or whether the persons named in said Bill as the children and grand-children of Mrs. Glover, are, or not, the descendants or the heirs at law of said Morgan, or whether they or any of them do, or not, reside in the said State of New York, this defendant is wholly ignorant and calls upon complainants to make proof of the same. This defendant however denies, if the said Morgan did decease leaving heirs at law and the

persons or any or either of them named in said Bill are in fact his descendants and heirs at law, that the legal title to the lands described in said Bill, ever in any manner vested, or is now vested in trust, or otherwise in such heirs at law, or that such heirs at law or any or either of them ever had or now have, or has, any interest whatever in the same or in any part thereof.

And this defendant further answering says it has been informed and believes the same to be true as alleged in said Bill of Complaint that said Caldwell, Brace and Morgan assuming to act in the capacity of Trustees of said Land Company which had closed its business and in fact dissolved as aforesaid more than 25 years prior thereto, did on or about the 23rd day of March, A. D. 1836, execute in form to Thomas Lloyd a quit-claim deed purporting to convey to him any legal interest, which they then might have, as trustees of said Land Company in a small portion of the lands described in said Bill, and that they executed said quitclaim without any previous division or sale of the lands therein described by the directors of said Company and without the direction of said directors. But this defendant denies that they executed the same without consideration; to the contrary thereof this defendant has been informed and believes the same to be true, that said Lloyd paid to said Trustees the sum of Nine hundred dollars or thereabouts, as a consideration for the execution of said deed, but whether said Trustees did, or not, appropriate to their own use such consideration and not account for the same to the members of said Company then surviving and to the heirs and assigns of such as had then deceased, or whether said deed was or not, executed in pursuance of a fraudulent combination entered into between said trustees and said Lloyd to cheat and defraud, the defendant is wholly ignorant. But this defendant denies that said Lloyd in procuring said deed intended to defraud complainants or their pretended co-tenants. That exhibit "D" attached to said Bill of Complaint is a copy of said quitclaim deed, and that the same is recorded in Book 27, page 204 of the records of said Cuyahoga County. And this defendant further answering says it has been informed and believes the same to be true as alleged in said Bill of Complaint, that said Thomas Lloyd deceased in the year 1842, leaving the several persons named in said Bill his children and heirs at law; that the administrators of said Lloyd subsequent to his decease, in pursuance of some orders or pretended orders of the Court of Common Pleas of the said county of Cuyahoga, executed, in form, to William B. Lloyd, conveyances of the land described in the quitclaim deed of said trustees; that such conveyances are recorded in the record books of said Cuyahoga County and that said William B. Lloyd after the execution of said conveyances claimed by virtue thereof to be seized of the legal title of the lands therein described.

218 Mr. FOOTE: I object to the reading of the next section of the answer, for the reason that the exhibit which is referred to as explanatory of it, and without which this paragraph is practically meaningless, is missing.

Mr. LAWRENCE: We have offered the record just as it is.

The COURT: Have you examined the original files?

Mr. FOOTE: Mr Belford, the clerk of the U. S. Court, stated on the former trial: "The original files are not here. We have written to Cincinnati to see if they are there. We have looked for them several times."

The COURT: Is the plat in the book, the exhibit described in that paragraph there?

Mr. LAWRENCE: It seems not. I will read the paragraph in order that the court may see what it is:

"And this defendant further answering says that for the purposes and in the manner hereinafter stated, and under a legal authority so to do, derived from the source and in the manner hereinafter set forth and not otherwise this defendant is in the joint occupancy with the said Cleveland, Painesville & Ashtabula Railroad Company, or so much of the premises mentioned in said Bill, and embraced between the westerly line of Water Street extended on the east to the said Government Pier on the west, the northerly line of these premises in said Bill mentioned on the north, and a line drawn parallel with, and one hundred and thirty-two feet northerly from the said northerly line of original lot number one hundred and ninety-one, on the south as on the Diagram hereto attached as Exhibit A and made a part of this Answer is colored a straw color, together with the tracks thereon indicated by red lines; which diagram these defendants aver is a true representation showing the lands embraced in said Bath street at the time this defendant took possession of the same and lying southerly of low water mark—the water line or lot water mark in said lake at the time possession was so taken—the piling and planking that has since been done by it, the said Cleveland, Painesville & Ashtabula Railroad Company, and The Cleveland & Pittsburgh Railroad Company northerly of said water line and the structures which have by them respectively, been erected on the same as extended by said piling and planking."

The court sustained the objection to said paragraph; to 219 which ruling of the court the plaintiff then and there excepted.

"And this defendant further answering says, that so much of said premises as lies north-ly of said low water mark line, neither the said Connecticut Land Company nor said trustees nor their heirs or assigns, nor the heirs or assigns of any or either of them ever had or now have or has, any title whatever, and that the title to the same both legal and equitable and the sole control thereof have at all times been and still are in the public for the sole use and benefit of the public.

And this defendant further answering denies that it occupies or claims to occupy the aforesaid parcels, through or under, in any manner, the said William B. Lloyd or his assigns or the other heirs at law of said Thomas Lloyd, or their assigns or said Thomas Lloyd himself or under or by virtue of the quitclaim deed to said Lloyd from said trustees, or that this defendant now holds, or ever held, any title, or interest whatever in said parcels of land or either of them in trust for Complainants, or any or either of them, or that

this defendant has received a large amount of rents and issues from said lands as alleged in said Bill of Complaint. But this defendant admits that it does now and has at all times hitherto refused to recognize said complainants as having any legal or equitable title whatever in said parcels or either of them, and that it has at all times, refused and still does refuse to account in any manner to complainant for the use of said parcels or either of them.

And this defendant further answering says, that as early as the year 1796 the Connecticut Land Company being desirous of founding a city of the Western Reserve at the Mouth of said Cuyahoga River and on the easterly side thereof, caused the northwesterly portion of the lands upon which the said City of Cleveland is now situated by Seth Pease and Augustus Porter, Surveyors of said Company and authorized agents thereof for such purpose, to be surveyed and laid off into town lots, streets, lanes and public grounds, and the town so surveyed and laid out to be named "The City of Cleveland," and a map or plat thereof, and minutes of such survey to be made by said Pease and Porter (commonly called the map and minutes of Pease and Porter) particularly setting forth the lots, streets, lanes and public grounds, and describing the same by courses, boundaries and extent—a copy of which map is hereto attached marked "B". For a copy of said minutes see Exhibit B filed in the answer in this case of the Cleveland, Columbus & Cincinnati Railroad Company, and made a part of this answer; that upon said map, said company caused the lots so laid off to be numbered progressively from 1 to two

220 hundred and twenty inclusive, and all the lands described in said bill of complaint, lying west of the west line of Water Street and north of the north line of lot No. 191 and of the said Cuyahoga River and south of the waters of Lake Erie as indicated on said map to be laid off as public ground and designated as "Bath Street," the same having no other northerly boundary than the waters of said Lake; said company intending thereby to give, and in fact giving thereby and dedicating to the public all lands so designated upon said map, as Bath Street, for the purpose of a public street or way communicating with the navigable waters of Lake Erie and said river, and for such other commercial purposes as the convenience and well being of the future inhabitants of said City of Cleveland might require a public ground situate as Bath Street was and is in reference to said Lake and river to be used—that in the year, A. D. 1801, said Connecticut Land Company by one Amos Spafford, a surveyor and authorized agent of said company for such purpose caused the streets, lanes and public grounds of the said City of Cleveland, surveyed and platted as aforesaid in the year 1796 to be surveyed and minutes thereof to be retaken and a second plat to be made of the lots, streets, lanes and public grounds in such City (which was and is substantially a copy of the aforesaid map of Pease and Porter) commonly called the plat and minutes of Amos Spafford of the City of Cleveland, a copy of which plat and minutes is hereto attached marked "B" and made a part of this answer and that upon said last mentioned plat (as upon the plat of said Pease and Porter) said company again caused all the lands lying west of

the west line of said Water Street and north of the north line of said lot No. 191 and the Cuyahoga River and south of the waters of Lake Erie to be designated as "Bath Street," thereby affirming the dedication and appropriation of the same made as aforesaid in the year 1796 to the public for the purposes aforesaid.

And this defendant further answering says, that said Connecticut Land Company having allotted and platted the said City of Cleveland as aforesaid, proceeded to sell the lots designated in said plats in reference thereto and long since sold out and otherwise disposed of all the lots in said plat and ceased to have any interest therein,—that the trustees of said company long since executed conveyances of the same to the purchasers thereof, distinctly recognizing the existence and validity of the survey and plat of said Spafford in their conveyances of the lots contiguous to said Bath Street,—that the purchasers of said lots took possession of the same and made valuable improvements thereon in reference to said plat and said Bath Street, and they and their assigns have ever since, for a period of more than half a century occupied and improved said lots, and

221 still do occupy and enjoy the same in reference to said plat; and that from the making of the said Spafford Map, as aforesaid, until the present time said Land Company and their assigns, so long as they continued to have any interest in the lands embraced in said plat and the inhabitants of said City of Cleveland, have at all times recognized and still do recognize the plats of said Spafford and Pease & Porter as controlling evidence of the boundaries of lots, streets, lanes, and public grounds, designated therein. And this defendant further answering says, that in obedience to the requirements of an act of the Legislature of the territory northwest of the Ohio passed December sixth, A. D. 1800, entitled "An act to Provide for the Recording of Town Plats," and to be found in Volume 1, Chase's Ohio Statutes, Chapter 130, page 291, and which is made a part of this answer, said Land Company caused the map and minutes of said Spafford, as it had before caused those of said Pease and Porter, to be deposited in the office of the Recorder, of the said county of Trumbull (in which county the lands described in said plat were then situate) for record and the same as this defendant has been informed and believes to be true, were, on or about the 15th day of February, A. D. 1802, duly recorded by the recorder of said county although the record of said map has long since been accidentally lost, or destroyed, and cannot now be found. And this defendant further answering says, that as early as the year A. D. 1800, said Bath Street as delineated on the plat of said Spafford having for its northern boundary the waters of Lake Erie as aforesaid, with the full knowledge and consent of said Land Company was opened, occupied and traveled as a public street or way and from thence hitherto with the full knowledge and uninterrupted acquiescence of said Company, the trustees thereof and their respective heirs and assigns, it has been at all times regarded, used and occupied by the inhabitants of the said City of Cleveland and the public generally without molestation, not only as a public way in said City (but also and of late years extensively so) as a quay or public land-

ing for persons and property transported and to be transported upon the waters of Lake Erie and still is so regarded, used and occupied by the inhabitants of said City—and that for more than a quarter of a century prior to the year 1827 when the channel of said river, as laid down on the map of said Spafford was changed to its present location by the United States Government, said Bath street was the only public way used, or which could be used, by the inhabitants of said city and public for the transportation of persons and property, by vehicles of every description to or from said lake or river.

222 And this defendant further answering says; that by "An act to incorporate the village of Cleveland in the County of Cuyahoga" passed December 23, A. D. 1814 and to be found in Volume 13, page 17 of the laws of said State, and which is made a part of this answer, so much of the plat of said Spafford as lies northerly of Huron Street was erected into a village corporate to be known by the name of "The Village of Cleveland" and the corporation thus created, invested with the powers therein mentioned, which corporation continued to exist until superceded as hereinafter stated; that by another act of the same General Assembly entitled "An act to incorporate the City of Cleveland in the County of Cuyahoga," passed March, A. D. 1836, and to be found in Volume 34, page 271, of the local laws of said State and which is also made part of this answer, all the lands embraced in the plat of said Spafford lying eastwardly of the present channel of the Cuyahoga River, together with additional territory was declared to be a city and the inhabitants thereof created a body politic and corporate by the name and style of the "City of Cleveland" and invested with such powers and trusts touching the streets, alleys, public grounds and harbor within the corporate limits thereof, as are specified in said act, which powers and trusts have from thence hitherto been and still are exercised and executed by said corporation, and that said Bath street at all times since the passage of said acts of incorporation respectively, with the knowledge and acquiescence of said Land Company, its trustees and their respective heirs and assigns, has been claimed, regarded, controlled and regulated by the inhabitants and corporate authorities of said Village and City as one of the streets and public grounds thereof and still is so claimed, regarded, and governed by the corporate authorities of the said City of Cleveland and the use of the same as such has never been in any wise vacated, or abandoned by said city or its inhabitants; and these defendants aver that by reason of the premises aforesaid, said Bath street is in fact one of the public streets and grounds of said city.

Whereupon the defendants objected to the reading of the next paragraph of said answer; which objection was sustained by the court; to which ruling of the court excluding said paragraph the plaintiff then and there excepted for the following reasons, to-wit: First, for the reason that it is part of the statement of the Cleveland & Pittsburgh Railroad Company, and as an admission of a fact it is competent in this case. Second, on the ground that the evidence excluded is evidence of an admission tending to show the intention of the Cleveland & Pittsburgh Railroad Company as to the occu-

223 pation of the street at the time the answer was filed, and as — whether or not there had been an abandonment of the street by the City of Cleveland. Third, because the evidence excluded tends to show the attitude of the Cleveland & Pittsburgh Company towards the land included in Bath street at the time the answer was filed, and offered to prove the contents of the said paragraph as follows:

“That the legal title thereof, as this defendant is advised by counsel learned in the law is now vested either in the said City of Cleveland or the public in trust for the uses and purposes intended as aforesaid by said Connecticut Land Company in dedicating the same as aforesaid to the public, and that the public has the right to use the same for such purposes without molestation from complainants.”

And this defendant further answering says, that after the channel of the Cuyahoga river, as delineated on the plat of said Spafford was changed to its present location as aforesaid, the Government of the United States on the easterly side thereof at its mouth (to render said river accessible to water craft navigating Lake Erie) constructed permanent improvements extending into said lake more than a quarter of a mile from the northerly or water line of said Bath Street—as it was when said channel was changed—that by reason of said improvements and lesser ones made by the inhabitants and corporate authorities of said city at great expense, the encroachment of said Lake upon said Bath Street which at times had threatened wholly to submerge the easterly portion thereof at and in the vicinity of said Water street, and render the same useless for the purposes to which it was dedicated as aforesaid, have been stopped and that part of said Bath street, easterly of, at and in the vicinity of the east pier of said river has been increased in width by slow and imperceptible alluvial formations so that the great portion of the land embraced between the southerly line of said Bath street and said water line or low water mark, as the same was when this defendant took possession of said premises has been formed by accretions and lies northerly of the water line of said street, as it was when said channel was changed, and that notwithstanding said Bath street has increased in width, and shall continue gradually to increase in width, the rapid growth of the said city of Cleveland and the increased and increasing wants of its commerce and of its inhabitants more than keep pace with the increase of said street, and imperatively require every part and parcel thereof, enlarged as it is, to be used for the commercial purposes to which it was devoted, as aforesaid, by the original proprietors of said Western Reserve, and will ever

224 require the same however much it may be enlarged by the means aforesaid to be thus used and appropriated.

And this defendant further answering says that it is a body politic and corporate, duly organized under and by virtue of an act of the legislature of said State of Ohio, entitled “An act regulating railroad companies” passed February 11, 1848, and an act entitled “An act to incorporate the Cleveland Painesville & Ashtabula Railroad Company,” passed Feb. 18, 1848, and the several acts

amendatory and supplementary thereto, all of which acts are made part of this answer.

This defendant further avers that it has been such body politic and corporate ever since the first day of August, A. D. 1849, and that under and by virtue of the power conferred upon it by the said several acts, this defendant has constructed and is now successfully using a railroad extending from the grounds so in its occupation embraced within and in the vicinity of said Bath street in the City of Cleveland, to the line between the State of Pennsylvania and said State of Ohio, in the County of Ashtabula, to the great advantage of the public at large, and especially to the inhabitants of said City of Cleveland.

And this defendant further avers that to secure to the public the benefits contemplated in the charter of this defendant in the working of its said railway, it being necessary to connect the same with the waters of said lake and river within the limits of said Bath street for the delivery of freight and passengers and the exchange of the same with other roads, and with water craft navigating said Lake and river and the same being also a suitable place for the terminus of said railway within said City of Cleveland, this defendant under a license obtained from said City of Cleveland has laid down in a proper manner and not otherwise its railway tracks upon said Bath street as shown in said Diagram and in such manner as to connect its said railway with the waters of said lake and river, and this defendant is now and for some time has been running its railway carriages in connection with said Cleveland, Columbus & Cincinnati Railroad Company upon the tracks so laid down, to and from said river and lake, for the purposes aforesaid, in a prudent manner, at reasonable times and so as to work no inconvenience to other legitimate uses of said street.

And this defendant further answering says that to make said exchanges with a due regard to the safety of persons and property it was indispensably necessary to provide suitable railway fixtures and improvements upon some part of said Bath street and that for such purpose and such purpose only this defendant with the consent of said City of Cleveland and in connection with said Cleveland & Cincinnati Railroad Company has also constructed, and is now using and maintaining in a reasonable manner, the structures for depots, engine houses and other railway fixtures indicated on said diagram as the joint possessions of this and the last named company, all which are necessary to the convenient management of its said road.

And this defendant further answering says that the harbor accommodations afforded by said river being inadequate to the commercial wants of the inhabitants of said City of Cleveland and the channel of said river contiguous to said Bath street being also too small and otherwise insufficient to admit of the safe and convenient ingress and egress to and from the same of the largest class of water craft navigating said lake, to effect conveniently and safely exchanges of passengers and freight with such craft, it was necessary for this defendant and the said Cleveland, Columbus & Cincinnati

Railroad Company to construct in a suitable manner and to a depth of water sufficient for the safe approach thereto of such craft, a wharf upon that portion of the premises embraced in said diagram and lying northerly of the water line or low water mark between said Bath street and said lake, and thereon shown to be in the joint possession of this and the last named company, and in connection with said last named company it has constructed such wharf and laid down thereon the tracks and erected the structures shown on said diagram, and this defendant in connection with said Cleveland, Columbus & Cincinnati Railroad Company is now and for some time past has been, for the purpose of making such exchanges working in a prudent manner, and without inconvenience to the public its railway carriages upon said tracks, and this defendant, when necessary so to do, has also used portions of said wharf as a place of temporary deposit for property awaiting transportation.

And this defendant submits and insists that it has the right as a component part of the public to occupy with the consent of said city, said Bath street in the manner and for the purposes aforesaid; that such use is a great public accommodation and not incompatible with the purposes intended by said Connecticut Land Company in dedicating the same to the public as aforesaid, but consistent therewith, and that the City of Cleveland in permitting this defendant thus to use a limited portion of said street, and thereby distributing its legitimate use so as to best subserve the convenience and business interests of its inhabitants and the rest of the public has committed no breach of trust, nor violated any public or private right, but performed rather a duty which it owed as well to the

forecast of said Land Company as to the public.

226 And this defendant further answering submits if it is mistaken in the opinion hereinbefore expressed that the legal title of said Bath street is now vested in said City of Cleveland, or in the public in trust for the inhabitants of said city and the same is in fact held by said Lloyd or his assigns that the parties, who hold the same whoever they may be, have no beneficial interest in said street, and hold the legal title thereof in trust merely for the uses and purposes intended by said Land Company in dedicating the same to the public as aforesaid and ought not to be permitted in a court of equity to disturb or molest this defendant or the rest of the public in the legitimate use of the same.

And this defendant further answering says that the two acre lots mentioned in said Bill of Complaint and numbered respectively 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 186, 187, 188, 189 and 190, and situate on the north side of Lake street in said City of Cleveland, as laid out and platted by said Pease and Porter and said Spafford, extend to Lake Erie and are bounded on the north by the waters of said lake and no lands exist between the northern boundary of said lots and the waters of said lake, as more fully appears by the copies of said plats hereto attached; that prior to the year A. D. 1805, said Land Company sold and disposed of all of said lots to divers persons, and the trustees thereof conveyed the same to such persons bounding each

and every of said lots on the north by said lake and the grantees of said lots and their assigns still own the same and have from thence hitherto claimed and still do claim title to the waters of said lake, and have used, occupied and enjoyed the same to said lake and still do, and that this defendant having procured the right of way for that purpose from the proprietors of said lots, has constructed and is now maintaining its railway on the northerly side of said lots and within the boundaries thereof and is now also occupying for a like purpose and is the owner in fee of the north part of lots Nos. 1 and 2, respectively and claims title thereto on the north to the waters of said lake.

And this defendant further answering insists also inasmuch as the pretended equitable rights of complainants set up in said bill to said Bath street, if originally well founded, accrued to complainants or those through whom they claim title in the year 1795, and more than fifty-four years have elapsed since such equitable rights fully ripened and ought to have been asserted against said city, and its inhabitants have as aforesaid, used and occupied without molestation, claiming the right so to do, said Bath Street as hereinbefore

mentioned with full knowledge of complainants and those
227 through whom they claim title, and inasmuch as said city has expended large sums in improving said Bath Street for the public accommodation and private property contiguous to, and in the vicinity of said street, has been improved and occupied in reference thereto under the bona fide belief induced by the silence and acquiescence of complainants and those through whom they claim title, that the same was public property for the purposes aforesaid, and inasmuch as the withdrawal of said street from public use at this late day would materially affect the public accommodation and work irreparable injury to private rights, that complainants and those through whom they claim, have slept too long upon their alleged rights in said Bath street and have been guilty of too gross laches to be entitled in a court of equity to any relief whatever in the premises. And this defendant respectfully asks the same benefit of the lapse of time in its defense on the bearing of this cause, as if it had plead same specially in bar of the relief prayed for in said Bill of Complaint.

And this defendant having fully answered said complainants' bill prays to be hence dismissed with its reasonable costs in this behalf most wrongfully sustained.

S. J. ANDREWS &
BISHOP, BACKUS & NOBLE,

Solicitors for Def't.

In testimony whereof Wm. Case, president of said Cleveland, Painesville & Ashtabula Railroad Company, has hereunto affixed his signature and the seal of said company this fifteenth day of June, A. D. 1854.

[SEAL.]

WM. CASE,
Pres't C., P. & A. R. R. Co.

And further to maintain the issues on its part, the plaintiff offered in evidence from said record in the Holmes case, the Replication. (To which the defendants objected.)

Judge SANDERS: For what purpose do you offer the replication?

Mr. BAKER: I offer it for the purpose of showing that the issues as made in the pleadings were not changed by the replication, in any further proceedings; that they went to the country on the replication.

The objection was sustained by the court; to which ruling of the court the plaintiff then and there excepted.

Whereupon counsel for plaintiff offered in evidence from the record in the Holmes case, the judgment in said cause.

To which the defendants objected; which objection was sustained by the court; to which ruling of the court the plaintiff then and there excepted.

228 Whereupon counsel for plaintiff offered in evidence the entire record in the Holmes case, for the purpose of showing that no other pleadings were filed by the several defendants.

Mr. FOOTE: What do you mean by the entire record?

Judge LAWRENCE: I have said I offer the entire record, exclusive of the pleadings which have been offered and received in evidence, solely for the purpose of showing that no other answers were filed by either of these defendants, and for the further purpose of showing that the cause was pending until the 17th day of July, 1860.

The COURT: The purpose is to show that from the time the petition is filed they were still asserting the matters set up in their answers, down to the final determination of the case?

Mr. BAKER: Yes.

The COURT: For that purpose it may be admitted.

To which the defendants objected; which objection was overruled by the court; to which ruling of the court the defendants then and there severally excepted.

A true copy of the remainder of the record so offered is as follows, to-wit:

(Extract from Appearance Docket Entries.)

Jan'y 17, 1857.

In Chancery.

No. 431.

HENRY HOLMES, JULIUS C. SHELDON & FRANCIS GRANGER, Surviving Executor & Trustee of Gideon Granger, Dec'd,

vs.

THE CLEVELAND, COLUMBUS & CINCINNATI RAILROAD CO., THE Cleveland & Pittsburg R. R. Co., The Cleveland & Mahoning R. R. Co., The Junction R. R. Co., The Cleveland, Painesville & Ashtabula R. R. Co., David Tod & Daniel P. Rhodes.

Subpoena issued Dec. 26, 1853, from U. S. Cir. Court for Dist. of Ohio.

Removed from Cir. Court for S. Dist. of Ohio.

Jan. 17, 1857. Order of Removal filed, also Bill, answers of four Rail Road Co.'s and Replication to same.

229 (*Copy of Final Record from July Term, 1857, to Dismissal of Bill.*)

And afterwards to wit at the February Special and adjourned Term of said Court in the year of our Lord One thousand eight hundred and fifty seven and at the several Terms thereafter unto the July Stated Term thereof A. D. 1859 this cause was continued.

And afterwards to wit on the Eleventh day of August in the year of Our Lord One thousand eight hundred and fifty nine being at the July Stated term of said Court in said year His Honor Judge Willson having been of counsel in causes involving the same questions at issue in this case, declines hearing and determining this cause and by consent of the parties respectively, the same is reserved for hearing before his Honor Mr. Justice McLean at Cincinnati on the 13th day of October next. And it is hereby ordered that the Clerk of this court have the papers in this case with this Journal Entry at Cincinnati at the time above specified.

And now to wit at the said July Stated Term of said Court in the year of our Lord One Thousand eight hundred and sixty first herein above mentioned to wit on the Seventeenth day of July in said year this cause having been reserved at the July Term 1859 for hearing before the Honorable John McLean presiding Judge of this Court and having been heard accordingly and argued by counsel, the Court being now fully advised in the premises, doth order, adjudge and decree that the Bill of Complainants be and the same is hereby dismissed.

It is further ordered that the said Complainants within Thirty days pay the costs of this proceeding to be taxed and in default of

such payment that execution issue to collect the same as upon judgments at law.

(Endorsed:) No. 431. U. S. Circuit Court, Northern District of Ohio, Eastern Division. Henry Holmes et al. vs. The Cleveland, Columbus & Cincinnati Railroad Co., etc. Copy of Appearance Docket and Final Record. Irvin Belford, Clerk.

And further to maintain the issues on its part, the plaintiff offered in evidence Deed of Cession from the State of Connecticut to the United States, found in the Public Land Laws, Part 230 1, page 594. A true copy of the same is as follows, to-wit:

"Cession from the State of Connecticut in Congress September 1, 1786.

"The delegates from Connecticut having thereupon proceeded and executed a deed of cession, agreeable to the resolution of the 26th May last, in the words following:

Deed of Cession.

"To all who shall see these presents, we, William Samuel Johnson and Jonathan Sturges, the underwritten Delegates for the State of Connecticut in the Congress of the United States send Greeting: Whereas the General Assembly of the State of Connecticut on the second Thursday of May, in the year of our Lord One thousand seven hundred and eighty six, passed an Act in the following words, viz:

"Act of Connecticut Recited.

"Be it enacted by the Governor, Council and Representatives in general court assembled and by the authority of the same, That the Delegates of this State or any two of them who shall be attending the Congress of the United States be and they are hereby directed, authorized and fully empowered in the name and behalf of this State, to make, execute and deliver under their Hands and Seals an ample Deed of Release and Cession of all the rights title, interest, jurisdiction and claim of the State of Connecticut to certain Western Lands beginning at the completion of the forty first degree of North Latitude One hundred and twenty miles west of the western boundary line of the Commonwealth of Pennsylvania as now claimed by said Commonwealth, and from thence by a line to be drawn North parallel to and one hundred and twenty miles west of the said west line of Pennsylvania and to continue North until it comes to forty two degrees and two minutes north Latitude. Whereby all the right, title, interest, jurisdiction and claim of the State of Connecticut to the lands lying West of said line to be drawn as aforementioned one hundred and twenty miles west of the Western boundary line of the Commonwealth of Pennsylvania as now claimed by said Commonwealth shall be included released and ceded to the United

States in Congress Assembled for the common use and benefit of the said States, Connecticut inclusive. Now, therefore, know ye, that we the said William Samuel Johnson and Jonathan Sturges by virtue of the Power and authority to us committed by the said Act of the General Assembly of Connecticut before recited in the name and for and on behalf of the said State of Connecticut, do, by these presents, assign, transfer, quitclaim, cede and convey to the United States of America for their benefit, Connecticut inclusive, all the right, title, interest, jurisdiction and claim which the said State of Connecticut hath in and to the before mentioned and described territory or tract of country, as the same is bounded and described in the said act of Assembly, for the uses in the said recited act of Assembly declared.

"In witness whereof, we have hereunto set our hands and seals, this thirteenth day of September, in the year of our Lord one thousand seven hundred and eighty six, and of the sovereignty and independence of the United States of America the eleventh.

"WILL. SAM. JOHNSON. [L. S.]

"JONATHAN STURGES. [L. S.]

"Signed, sealed, and delivered in presence of

"CHAS. THOMPSON.

"ROGER ALDEN.

"JAS. MATHERS.

Cession Accepted from Connecticut.

"On motion,

"Resolved, That Congress accept the said deed of cession, and that the same be recorded and enrolled among the acts of the United States in Congress assembled."

And further to maintain the issues on its part, the plaintiff offered in evidence the statute incorporating the Village of Cleveland, found in Volume 13, page 17, of Ohio Laws, and a true copy of same is as follows, to-wit:

An Act to Incorporate the Village of Cleveland, in the County of Cuyahoga.

SEC. 1. Be it enacted by the General Assembly of the State of Ohio, That so much of the city plat of Cleveland, in the township of Cleveland & County of Cuyahoga, as lies northwardly of Huron Street, so called, and westwardly of Erie Street, so called, in said city plat, as originally laid out by the Connecticut Land Company, according to the minutes of the survey and map thereof now on record in the office of the *record* in said county of Cuyahoga, shall be and the same is hereby erected into a village corporate, henceforth to be known and distinguished by the name of "The Village of Cleveland, & subject however to such alterations as the legislature may from time to time think proper to make.

SEC. 2. Be it further enacted, That for the better regulation and government of said village, it shall be lawful for the electors who shall have been resident in said village for one year next preceding the time or times of holding elections hereinafter mentioned, to meet on the first Monday in June next, and on the first Monday in June annually, thereafter, and elect by ballot a president, recorder, three trustees, a treasurer, village marshal, and two assessors, each of whom, at the time of his election, shall be a freeholder or householder in said village, and have been a resident therein one year next preceding said election; and each of said officers shall, within five days after being notified of his election, take an oath or affirmation before some person authorized to administer the same, faithfully to discharge the duties of his office, and shall hold such office for one year, and until his successors shall be elected and qualified.

SEC. 3. Be it further enacted, That the first election under the provisions of this act, shall be held at the court house, in said village, & all subsequent elections at such place as the president shall direct, and all such elections shall be opened between the hours of 12 and 1 o'clock P. M. and closed at 4 P. M. At the first election two judges and a clerk shall be appointed viva voce by the electors present, who shall severally take an oath or affirmation faithfully to discharge the duties of their respective offices; and at all subsequent elections the president and trustees, or any two of them who shall be present, shall be judges and the record clerk of the election; at the close of the poll the ballots shall be counted by the judges of the election, and a statement of the votes publicly declared; a fair record thereof shall be made by the clerk, who shall notify each of the persons so elected of his election, within five days thereafter, & it shall be the duty of the president, at least five days before the time of holding the election in each year, after the first election, to set up notice of the time and place of holding such election, in three of the most public places in said village.

SEC. 4. Be it further enacted, That the president, recorder and trustees, and their successors in office, so as aforesaid elected and qualified, shall be a body politic and corporate, to be known and distinguished by the name of "The trustees of the Village of Cleveland; and by the name aforesaid shall have perpetual succession, with the capacity to purchase, receive, hold and convey any estate real or personal for the use of said village: Provided, That
233 the clear annual income of said estate shall not exceed five thousand dollars; and shall be also capable of suing and being sued, pleading and being impleaded, in any action in any court within this state; and when any action or suit shall be commenced against said corporation, the service shall be by a proper officer's leaving an attested copy of the original process with the recorder, or at his usual place of abode, at least ten days previous to the return thereof; and the said trustees are hereby authorized to have a common seal for the use of said corporation, and the same to alter at their discretion.

SEC. 5. Be it further enacted, That the trustees, or a majority of them, whereof the president or recorder shall always be one, shall

have full power and authority to make and publish such laws and ordinances in writing, and the same from time to time to alter or repeal, as to them shall seem necessary and proper for the interest, safety, improvement and convenience of said village: Provided always, That such laws and ordinances shall be consistent with the constitution and laws of the United States and of this state: And provided also, That no such law or ordinance shall subject horses, cattle, sheep or hogs not belonging to said village, to be abused, taken up or sold for coming into the bounds of said corporation; & the president or in case of his absence or disability the recorder, shall have full power to administer all necessary oaths or affirmations, to hear complaints and take cognizance of all offences committed against the laws and ordinances of said corporation, and to impose such reasonable fines on all persons so offending, as may be affixed by said laws and ordinances to the breach thereof; to levy and cause to be collected all such fines by warrant under his hand and seal of the corporation, directed to the marshal, who shall collect the same under the regulations prescribed to constables in other cases, and shall pay over all monies so by him collected to the treasurer, for which he shall take the treasurer's receipt.

SEC. 6. Be it further enacted, That the trustees shall have power to regulate markets, to open and cause to be kept open, the streets, lanes and alleys of said village, and to repair and improve the same, to remove nuisances, to prevent any animals belonging to the inhabitants of said village from running at large in the streets, if in their opinion the interest and convenience of said village shall require such prohibition; to erect and keep in repair such public buildings or other works, of public utility as may be deemed necessary or useful; and the trustees shall also have power to fill

234 all vacancies which may happen between the annual elections in any of the offices herein established, which appointments shall continue until the next annual election, and until the officers elected shall be duly qualified; and said trustees are hereby authorized to appoint such other subordinate officer or officers as they may think necessary; to affix to the offices of recorder, marshal, and assessor, such fees and impose such fines for refusing to accept any office of the corporation, or for neglect or misconduct therein, as to them may seem proper; Provided, no fine for refusing to accept any office as aforesaid, shall in any case exceed ten dollars.

SEC. 7. Be it further enacted, That upon the petition of twelve freeholders or householders resident in said village, and having the qualifications of electors therein, praying for the establishment of any new street or streets in said village describing the same, the trustees shall have power to lay out, establish and open such new street or streets so prayed for, and cause a full and complete record thereof to be made and kept by said recorder: Provided, That notice of bringing said petition shall have been given for three weeks successively in some newspaper printed nearest said village, at least thirty days before bringing said petition: And provided also, That no street or streets shall be laid out or established across any ground occupied by any building or buildings, so as to cut off or include any

such building or buildings, or any part thereof, which shall have been erected or begun to be erected on said ground previous to notice of such petition being given as aforesaid.

SEC. 8. Be it further enacted, That if any person or persons shall think himself, herself, or themselves injured or aggrieved by the laying out or establishing of such street or streets across his, her or their land, such person or persons may, within thirty days thereafter, make out, in writing, and deposit with the recorder, his, her, or their claim for damages sustained by the laying out or establishing of said street or streets stating the amount thereof, and the numbers of the lots on which such damage is alleged to have been sustained and if the trustees shall fail within ten days thereafter, to pay or satisfy said claims, such person or persons claiming such damage may make application, in writing, to the sheriff of the county, whose duty it shall be, within three days after receiving such application, to cause the damage so as aforesaid claimed, to be appraised by three judicious, disinterested freeholders of the vicinity, not residing in said corporation, who, in appraising the damages, shall take into consideration the advantages resulting from laying out street or streets, to the lot or lots on which such damage is alleged to have been sustained, which said appraisal of damages shall be made out, in writing, signed by the said appraisers and a copy thereof lodged with the recorder, or at his usual place of abode, within three days after making such appraisal; and if said trustees shall refuse or neglect to pay the damages so assessed, to the person or persons so as aforesaid claiming and entitled to the same, within ten days after said appraisal is lodged with the recorder as aforesaid, and said damages being demanded, or if the person or persons claiming such damage shall think himself, herself, or themselves aggrieved by said appraisal, he, she, or they may institute his, her or their suit for the damages so as aforesaid claimed in the court of common pleas, in and for the county in which such village is situated, or before any court in the state of Ohio, having jurisdiction thereof against such trustee, and upon the trial thereof the court or jury shall be governed by the same rule in assessing the damage alleged to have been sustained, that is above prescribed for the government of the appraisers; and if the trustees shall fail to pay the judgment rendered in such suit, with the costs taxed by said court within thirty days thereafter, the street or streets, by the laying out of which the damage so adjudged shall have been sustained, shall be vacated, and said trustees shall, nevertheless, be liable to pay the costs of such suit, so as aforesaid taxed against them, provided that if such person or persons, commencing such suit shall recover a less sum than shall have been tendered to him, her, or them by said trustees previous to commencing such suit, such person or persons shall not recover costs, but costs shall be taxed against him, her, or them, and either party shall be allowed an appeal as in other cases.

SEC. 9. Be it further enacted, That the trustees (when in their opinion it may be expedient) shall have power, in the month of July annually, to lay a tax within said village, for the use of said

corporation, on all city or village lots within said corporation, on all other property subject to taxation for county purposes, provided no tax on improved real property shall exceed one per centum on the value, and the tax shall be levied on lots or other property in proportion to the value of such property, which value it shall be the duty of the assessors, so as aforesaid elected and sworn to estimate, and deposit with the recorder a statement thereof, in writing, on or before the fifteenth day of July in each year, if thereunto by the trustees required and notified fifteen days before the time herein specified for depositing such statement.

236 SEC. 10. Be it further enacted, That the marshal shall be the collector of the tax assessed as aforesaid, and is hereby authorized and required to collect and pay over to the treasurer all such sums of money as shall be assessed as aforesaid, for the use of said corporation, within three months from the time of receiving a duplicate thereof, and the treasurer's receipt shall be his voucher upon his settlement with the trustees, which settlement shall be when thereunto by said trustees required after the expiration of the three months aforesaid; and the marshal shall have power to make distress and sale of the personal property of any person charged with any tax as aforesaid, to satisfy said tax, if the same shall remain unpaid, giving ten days' personal notice before making such distress, and also give ten days' notice previous to making sale of any personal property by advertisement in three of the most public places in said village; and if the tax on any lot or lots, on which no personal property can be found, shall remain unpaid for two months after the expiration of the three months allowed for the collection of taxes, above specified, the marshal shall give notice in some newspaper published in or nearest to said village of the amount of said tax and the number of the lot or lots on which it is charged, and if said tax shall remain unpaid two months from the date of such advertisement, the marshal may proceed to sell, at public vendue, so much of said lot or lots as will discharge the same, taking the part sold in such manner as will include the same distance on the back as on the front line of the lot, and the marshal is hereby authorized to execute a deed or deeds, of such lots or parts of lots, as may be sold, which shall convey to the purchasers all such titles as the person in whose name such lot or lots were taxed had to the same, subject to such right of redemption in the case of persons insane, or of feme coverts or minors, as is allowed in cases of lands sold for taxes under the laws of this state.

SEC. 11. Be it further enacted, That it shall be the duty of the recorder to make and keep a true and accurate record of all laws and ordinances made and established, of streets laid out by the trustees and of all their proceedings in their corporate capacity, which records shall at all times be open to the inspection of every elector in said village; and in case of the absence or disability of the president, the recorder is hereby authorized and required to do and perform all the duties required of said president; the same person may perform the duties of a trustee and assessor, if elected to both offices.

SEC. 12. Be it further enacted, That if any person or persons shall

237 think himself, herself or themselves aggrieved by an act or judgment of the trustees, it shall be lawful for such person or persons, within ten days to appeal to the court of common pleas for the proper county, who shall hear such causes or complaints, and grant such relief as to them may appear necessary and proper; Provided, such appellant give security, to be approved of by the clerk of the court to prosecute such appeal to effect and abide the judgment of the court thereon.

SEC. 13. Be it further enacted, That the corporation shall be allowed the use of the county jail for the confinement of such persons as by any law of the corporation may be subject to imprisonment, but no person shall be imprisoned under the authority of the corporation except for the non-payment of fines and penalties assessed or imposed on them: Provided, no person shall be imprisoned more than twelve hours, for one offense, and all persons so imprisoned, shall be under the charge of the sheriff of the county.

SEC. 14. Be it further enacted, That the treasurer shall pay over all monies by him received, to the order of the trustees, and shall, when required, submit his accounts and vouchers to their inspection, and the marshal and treasurer shall, before they enter upon the duties of their respective offices, give bond with security, to the trustees, to be approved of by them, and lodged with the recorder, conditioned for the faithful discharge of the duties of their respective offices.

This act to take effect, and be in force, from and after the first Monday in June next.

JOHN POLLOCK,

Speaker of the House of Representatives.

THOMAS KIRKER,

Speaker of the Senate.

December 23, 1814.

And further to maintain the issues on its part, the plaintiff offered in evidence an act of the legislature of Ohio found in Volume 13 of Ohio Laws, at page 114, entitled and reading as follows, to wit:

“An Act to Vacate Part of the City Plat of Cleveland, in the County of Cuyahoga.

238 “SEC. 1. Be it enacted by the general assembly of the State of Ohio, That all that part of the city plat and outlots of the City of Cleveland, so-called, as originally laid out by the Connecticut Land Company, which is not included within the limits of the corporation of the village of Cleveland, as specified in the ‘Act to incorporate the village of Cleveland in the county of Cuyahoga,’ passed the twenty-third day of December, eighteen hundred and fourteen, be and the same is hereby declared to be vacated; and shall not be subject hereafter to taxation as town and outlots, for county purposes; provided, nothing in this act shall be

so construed as to confirm or invalidate any existing legal rights of the said Connecticut Land Company, in and to the said plat or outlots; or to confirm or invalidate any legal right heretofore acquired to any of the said outlots by any person or persons whatever; but all such rights shall exist, be adjudicated and decided upon, as if this act had never been passed.

“JOHN POLLOCK,

“Speaker of the House of Representatives.

“THOMAS KIRKER,

“Speaker of the Senate.

“January 31, 1815.”

And further to maintain the issues on its part, the plaintiff offered in evidence Book A of Cuyahoga County Records, pages 482, 483, 484, and a true copy of same is as follows, to wit:

“Cleveland Survey of Amos Spafford in 1801.

“Minutes of the survey of the outlines Roads Lanes & Square of the City of Cleveland, as surveyed for the Connecticut Land Company in the year 1796 by Augustus Porter. Said minutes retaken by Amos Spafford Surveyor Nov. 6th, 1801. Said City is bounded as follows (viz.): Beginning on the Lake Shore on the East bank of the Cuyahoga River, then Eastwardly on the shore of the lake 102 chains, then South 34° East eight-eight chs. & 50 links, then South 56° West 38 chains 50 links, then North thirty-four degrees West ten chains & 50 links, then South 56° West to the bank of the Cuyahoga River, thence down said river as it winds and turns to the place of beginning, containing in the whole about five hundred and twenty acres, through which the following roads are laid in the following manner (viz.) Bath Street so called begins in the East bank of the Cuyahoga River seven chains 50 links above where it empties into Lake Erie, thence North 66° East thirty chains to a large white oak post standing in the West line of Water Street all the lands between said line and the lake is included in said Bath Street and is from three to five chains wide. Water Street is bounded by said post on the West side and is one chain and fifty links wide and runs from said post North 34° West to the
239 Lake Shore, then South 34° East twenty-nine chains to a white oak post standing in the North-west corner of Superior Street. Superior Street is two chains in width and begins at said last mentioned post and runs North 56° East fifty chains and 50 links to a white oak post standing in the West line of Erie Street. Erie Street begins at the last mentioned post and is one chain and fifty links wide and runs North 34° West 32 chains to the Lake Shore, then from said post South 34° East fifty-five chains to white oak post marked E. S. No. 133. Ontario Street begins at a post standing on the bank of the lake in the West line of said street twenty-four chains East of the East line of Water Street, then running South 34° East 51 chains to a post standing in the North line of Huron Street said street is one chain and 50 links wide. Huron

Street begins at a post in the North line of said street on the East bounds of the City thirty-three chains North by West from the South east corner of said City, then running South 54° West fifty-three chains to the east bank of the Cuyahoga said street being 150 links wide. Ohio Street is 150 links wide and begins at a white oak post standing in the north line of said street and in the West line of Erie Street 11 chains 50 lks. North of the South line of the City, then running South 54° West sixteen chains to a white oak post marked O. S. No. 117, then turning at right angles and running in the East line of said street twenty chains to a white oak post standing in the South line of Huron Street. Lake Street is 150 links wide and begins at a white oak post standing in the North line of said street and in the West line of Erie Street twenty-one chains and 50 links North 34° West from the North-east corner of Superior Street, thence running south 56° West forty-nine chains and 50 links to a white oak post standing in the East line of Water Street. Superior lane begins at a post standing in the Southwest corner of Water Street and North-west corner of Superior Street, thence running South 77° West Nine chains to the Cuyahoga River, thence up the Cuyahoga River two chains 50 links, thence North 72° East to a white oak post standing in the center of Superior Street on the West line of Water Street. Union lane begins at the same post of Superior lane, is 100 links wide and runs nearly a West direction to the Cuyahoga. Mandrake lane is 100 links wide and begins at a white oak post standing in the North line of said road and West line of Water Street thirteen chains South from the post standing at the South-east corner of Bath Street running South 56° West five chains, then nearly South until it strikes Union lane. Vineyard lane begins at a white oak post standing in the West line of said lane being the South-west corner of Superior Street, then running South 12° West to the Cuyahoga River. Said lane is 75 links wide. The square is laid out in the intersection of Superior Street & Ontario Street and contains ten acres. The center of the junction of the two roads is the exact center of the square. The above described City or Plot is laid into 220 lots of about two acres each which contains what lands is described by the outlines except about 50 acres lying in the bend of the Cuyahoga, which is bottom land and not lotted out; for the particular numbers and boundaries of each lot reference is to be had to the Field Notes and Maps in the Register's Office in the County of Trumbull or in the City of Cleveland.

Recorded Feb'y 15th, 1802, pr. me, John S. Edwards, Recorder for Trumbull.

I certify that the foregoing is a correct copy taken from "A" page 100 Trumbull County Records.

For A. SOUTHERLAND, *Recorder*,
H. H. LEAVITT, *Clk.*

Recorded Nov'r 22d, 1814.

HORACE PERRY, *Recorder*.

STATE OF OHIO,
Cuyahoga County, ss:

I, Horace Perry, Recorder for the County of Cuyahoga aforesaid, do hereby certify the within to be a true copy of the map of the City of Cleveland in said Cuyahoga County on record in the records of said County.

HORACE PERRY, *Recorder.*

(Map.)

The map accompanying said Minutes is hereto attached by copy, and marked Plaintiff's Exhibit Spafford Map of 1801.

And further to maintain the issues on its part, the plaintiff thereupon offered in evidence certain portions of the proceedings of a meeting of The Connecticut Land Company, held January 23, 1798, as recorded in Draft Book of Western Reserve on pages 188 and 189.

To which the defendants objected, on the ground that the proceedings of the Connecticut Land Company are not relevant or competent in this action, and, secondly, that if they were, the book offered is not proper proof of them, they not being the original records but only a copy of same.

The objection was sustained by the Court; to which ruling of the Court the plaintiff then and there excepted and sets out as follows the portion of said testimony which it offers to prove:

241 "January 27th. The meeting opened according to adjournment. When the following vote passed (viz.) Whereas the Directors of the Connecticut Land Company for the purpose of encouraging a Settlement on the Western Reserve and compensating those persons who first settle in the territory for the risk and hardships they encountered Have given to Tabitha Cuma Stiles wife of Job P. Stiles one city one ten and one hundred acre Lot, and to Anna Gunn wife of Elijah Gunn one hundred acre lot, James King and wife one hundred acre lot, and to Nathaniel Doan, one city lot, he being obliged to reside thereon as a Black Smith, and all in the city and town of Cleveland;

"Therefore (Voted) by the Connecticut Land Company, that they do approve and confirm the aforesaid grants and authorize the Directors to carry the same into complete effect."

And further to maintain the issues on its part, the plaintiff thereupon offered in evidence a quit claim deed from John Morgan, Jonathan Brace and John Caldwell, Trustees of the Connecticut Land Company, to Samuel Huntington, dated March 18, 1802, for sundry parcels of land including lots 1 and 191 in Cleveland, being lots in the vicinity of Bath Street, which said deed is recorded in volume E, page 115 of Cuyahoga County Records, a true copy of same being as follows, to wit:

"To all people to whom these presents shall come, Greeting.

Whereas, John Caldwell, John Morgan and Jonathan Brace, being Trustees for The Connecticut Land Company, as by indenture made the fifth day of September, A. D. 1795, between the purchasers of the Connecticut Western Reserve, of the first part, and us, the said Caldwell, Morgan and Brace of the second part, reference thereto being had, will fully appear;

"And whereas, in pursuance of the Constitution, votes and proceedings of said Company, reference thereto being had, the sale of certain tracts and lots of land (hereinafter described) in the City and Township of Cleveland in the County of Trumbull in the territory northwest of the River Ohio, has been made by the Directors of said Company to Samuel Huntington, Esquire, of the same Town of Cleveland, and in virtue of said sale the said Samuel Huntington has become entitled to receive from us the said Trustees a conveyance of all our legal estate and interest in and to said tracts and lots of land;

242 "Therefore we, the said John Caldwell, John Morgan and Jonathan Brace, in execution and fulfillment of the trust vested in us as aforesaid, do hereby remise, release, quit-claim and convey to the said Samuel Huntington, to his heirs and assigns, the following tracts and lots of land lying and situate in said township and City of Cleveland, viz: One tract or parcel butting westerly on the city lots containing one hundred and ten acres and sixty rods of land and bounded as follows, viz: Beginning at the northwest corner of ten acre lot No. 132 on the bank of the Lake; then south 34 degrees east of the middle road leading from Huron Street through the ten acre lot; thence eastwardly along said road to the southeast corner of lot No. 36; thence northwardly in the line of said lot to the northeast corner of lot No. 76; thence eastwardly to the southeast corner of lot No. 104; thence north 34 degrees west to the lake shore, being the northeast corner of lot No. 136; thence westwardly on the Lake Shore butting on the Lake to the first mentioned boundary.

"Also one other piece or parcel of land containing seventy-two acres and fifty-three rods of land and bounded as follows to wit: Beginning at the northeast corner of lot No. 74 in the City of Cleveland; thence running south 34 degrees east eighteen rods; thence south 64 degrees west twenty-six rods; thence south 26 degrees west fifty rods to a white ash pole marked; thence west twenty-six rods to the River Cuyahoga; thence up said river on the bank, following the course and windings of said river until it intersects the north line of Huron; thence eastwardly on said line until it strikes the west line of Ontario Street; thence northwardly on said street to the great Square; thence butting northwardly on said square to the southwest corner thereof; thence butting eastwardly on said Square until it strikes Superior Street; thence westwardly on said Street to the first mentioned boundary, excluding from the aforementioned and described parcels of land lots No. 77 and No. 79, and any part of Vineyard Lane that may be included in said admeasurement and wanted for public use; forty acres and forty-two rods of the last described piece of land lies and is situated in the

great bend or peninsula of the Cuyahoga and without the bounds of the City; the remaining thirty-two acres eleven rods lies within the City and includes Maiden Lane.

"Also one other piece or parcel of land containing seventeen acres and forty-seven rods including and comprising No. 1 and No. 2 and No. 3 butting west on Water Street, south on Lake Street, and east on lot No. 4 and north on the Lake, and lots No. 191, No. 192, No. 193 and No. 194 butting eastwardly on Water Street and westwardly on Cuyahoga River.

243 "The several tracts and parcels of land herein mentioned and described were surveyed by Maj. Amos Spafford, surveyor;

"To have and to hold the aforesaid described premises to him the said Samuel Huntington, his heirs and assigns forever, to his own proper use, benefit and behoof.

"In witness whereof we have hereunto set our hands and seals this eighteenth day of March, A. D., 1802.

"JNO. MORGAN. [L. S.]

"JONA. BRACE. [L. S.]

"JOHN CALDWELL. [L. S.]

Signed, sealed and delivered in presence of
SOLOMON PORTER.
EPM. ROOT.

STATE OF CONNECTICUT,

Hartford County, ss:

March 18, A. D., 1802, personally appeared John Caldwell, John Morgan and Jonathan Brace, Esquires, signers and sealers of the within instrument, and acknowledged the same to be their voluntary act and deed. Before

EPM. ROOT,
Just. Pacis.

STATE OF CONNECTICUT,

Hartford County:

I, Theodore Dwight, Notary Public for said County, duly appointed and qualified, residing in the City of Hartford, in said County, hereby certify, make known and declare, to whom it doth or may concern, that Ephraim Root, Esqr., whose name is subscribed to the acknowledgement of the annexed instrument, is a Justice of the Peace for said Hartford County, and as such is by law authorized to take and certify such acknowledgment; that said subscription is in his, said Root's handwriting, I the said Notary being well acquainted therewith, and that full faith and credit is due to his official certificate in Court and Country.

In testimony whereof I have hereunto set my hand and fixed my notarial seal this 18th day of March in the year of our Lord one thousand eight hundred and two.

[L. S.]

T. DWIGHT,
Notary Public.

Received April 29, 1824, and recorded May 6th, 1824.

HORACE PERRY, *Recorder*.

And further to maintain the issues on its part, plaintiff thereupon offered in evidence the Deed found in Volume A, page 19 of Cuyahoga County Records, from Samuel Huntington and wife to James Root, a true copy of same being as follows, to wit:

244 To all to whom these presents shall come, Greeting

Know Ye that we, Samuel Huntington, of Painesville in the County of Geauga and State of Ohio, and Hannah Huntington, his wife, for the consideration of one hundred dollars received to our full satisfaction of James Root, of Cleveland, in the County of Cuyahoga and State aforesaid, Esqr., do give, grant, bargain, sell and confirm unto him the said James Root, Esquire, one certain lot or parcel of land situate, lying and being in the town plot of Cleveland aforesaid, and numbered one in said town plot, bounded and described as follows, viz: northerly by Lake Erie; westerly by Water Street, southerly by Lake Street and easterly by Ontario Street, containing about two acres of land, be the same more or less.

To have and to hold the above granted and bargained premises, with the appurtenances thereof, unto him the said James Root, Esquire, his heirs and assigns forever, to his and their own proper use and behoof.

And also I, the said Samuel Huntington, do for myself, my heirs, executors and administrators, covenant with the said James Root, Esquire, his heirs and assigns, that at and until the ensealing of these presents I am well seized of the premises as a good, indefeasible estate in fee simple, and have good right to bargain and sell the same in manner and form as above written; and that the same is free of all incumbrances whatsoever. And furthermore, I, the said Hannah Huntington, do hereby remise, release and forever quitclaim unto him the said James Root, Esquire, his heirs and assigns all right and title of dower in and to the above described premises. And I the said Samuel Huntington do by these presents bind myself and my heirs forever to warrant and defend the above granted and bargained premises to him the said James Root, Esquire, his heirs and assigns, against all lawful claims and demands whatsoever.

In witness whereof we have hereunto set our hands and seals the 28th day of July, Anno Domini 1810.

SAMUEL HUNTINGTON. [L. S.]

HANNAH HUNTINGTON. [L. S.]

Signed, sealed and delivered in presence of

J. W. WOOD.

MARTHA HUNTINGTON.

THE STATE OF OHIO,
Geauga County:

Be it remembered, that on this thirteenth day of September,
A. D. 1810, personally appeared Samuel Huntington and
245 Hannah Huntington his wife, signers and sealers of the
within instrument, and the same having been fully made
known to her, and having been examined relative to any fear or
coercion from her husband, they severally acknowledged the same
to be their free act and deed.

Before me

SAMUEL W. PHELPS,
Justice of the Peace.

JOHN WALWORTH, *Recorder.*

Received for record Oct. 4th, 1810.
Recorded Oct. 9th, 1810.

And further to maintain the issues on its part the plaintiff there-
upon offered in evidence Deed recorded in volume A, page 452, of
Cuyahoga County Records of Deeds, from Samuel Huntington and
wife to James Root, Esq., a true copy whereof is as follows, to wit:

To all people to whom these presents shall come, Greeting:

Know Ye, that we, Samuel Huntington and Hannah Huntington
his wife, both of Painesville, in the County of Geauga and State of
Ohio, for the consideration of one hundred dollars received to our
full satisfaction of James Root, Esq., of the County of Portage and
State aforesaid, do give, grant, bargain, sell and confirm unto him
the said James Root, the following described tract or lot of land,
situated in township No. seven in the twelfth range of township in
the Connecticut Western Reserve in the State of Ohio, and which is
also in the town plat of Cleveland and in the County of Cuyahoga,
and is known by lot number two in the original plat of said town-
ship and bounded as follows: north by Lake Erie, east by lot num-
ber three, south by Lake Street and west by Water Street, containing
two acres by estimation.

Also lot number one as known in the original plat of said town,
bounded north by Lake Erie, east by lot number two, south by Lake
Street and west by Water Street, the latter lot being the same for
which a deed has been formerly executed to the said James Root,
bounded by mistake southerly on Ontario Street;

To have and to hold the above granted and bargained premises,
with the appurtenances thereof, unto him the said James Root,
Esquire, his heirs and assigns forever, to his and their own proper
use and behoof.

And also I, the said Samuel Huntington, do for myself, my heirs,
executors and administrators, covenant with the said James Root,
Esquire, his heirs and assigns, that at and until the ensealing of

246 these presents I am well seized of the premises as a good, in-
defeasible estate in fee simple, and have good right to bargain
and sell the same in manner and form as above written; and
that the same is free of all incumbrances whatsoever.

And I, the said Samuel Huntington, do by these presents bind
myself and my heirs forever, to warrant and defend the above
granted and bargained premises to him the said James Root, his
heirs and assigns, against all lawful claims and demands whatsoever.

And furthermore I, the said Hannah Huntington, do hereby
remise, release and forever quitclaim unto the said James Root,
Esquire, all my right and title of dower in and to the above described
premises.

In Witness Whereof we have hereunto set our hands and seals
the ninth day of June, Anno Domini, 1814.

SAMUEL HUNTINGTON. [L. s.]

HANNAH HUNTINGTON. [L. s.]

Signed, sealed and delivered in presence of

BENAIHA JONES.

SLYVESTER DURAND.

STATE OF OHIO,

Cuyahoga County, ss:

Personally appeared Samuel Huntington and Hannah Hunting-
ton his wife, signers and sealers of the within instrument; and the
said Hannah Huntington having been examined separately and
apart from her said husband, and the contents of the within deed
having been duly made known and explained to her, they severally
acknowledged the same to be their free act and deed, before me, the
9th day of June, 1814.

BENAIHA JONES,

Justice of the Peace.

Received August 25th and recorded September 3rd, A. D. 1814.

HORACE PERRY, *Recorder.*

And further to maintain the issues on its part the plaintiff there-
upon offered in evidence Deed recorded in Volume B, of Cuyahoga
County Records, page 614, a true copy of which is as follows, to wit:

To all people to whom these presents shall come, Greeting:

Know Ye, that whereas, Samuel Huntington, late of Painesville,
in the County of Geauga and State of Ohio, did in his lifetime, to
wit: on the twenty-second day of April, 1814, make and enter into
an agreement in writing with Alfred Kelley, of Cleveland, in the

247 County of Cuyahoga and State aforesaid, by which the said
Samuel Huntington agreed to sell to the said Alfred Kelley,

City lots numbered one hundred and ninety-one, one hun-
dred and ninety-two and one hundred and ninety-three, in the city
or town plat of Cleveland, except one-fourth of an acre sold to E.

& H. Murray on the northwest corner of said lot one hundred and ninety-one, and to make, execute and deliver to the said Alfred a good and sufficient deed of said lots excepting the one-fourth of an acre thereinbefore excepted, when the said Alfred should have made the several payments therefor as thereafter stated. And the said Alfred in and by said agreement did agree to pay the said Samuel for said lots the sum of nine hundred dollars in manner following, to wit: Two hundred dollars at the time of signing said agreement; three hundred and fifty dollars in one year from the date thereof, with the interest until paid; and the remaining three hundred and fifty dollars two years from the date -hereof with the interest thereon until paid, all of which will more fully and at large appear by said agreement which was signed with the hands and names and sealed with the seals as well of the said Samuel as of the said Alfred, a counterpart or duplicate of which is now on file in the office of the Clerk of Common Pleas in and for the County of Cuyahoga aforesaid, reference thereto being had.

And whereas the said Alfred did pay to the said Samuel in his lifetime the amount of the first and second instalments mentioned in said agreement, and the acceptance and satisfaction of the said Samuel of which payments were endorsed on said agreement in satisfaction of said first and second instalments; and whereas the said Samuel afterwards, to wit: on the 7th day of June, 1817, died intestate, not having completed said agreement by giving to said Alfred a deed of said land, and leaving heirs at law, some of whom are minors. And whereas letters of administration on the estate of the said Samuel were at the term of November, 1817, of the Court of Common Pleas in and for the County of Cuyahoga aforesaid by said Court then holden at Chardon in and for said County in due form of law, granted to me Francis Huntington of Painesville aforesaid; and whereas the said Alfred has since paid to me as administrator as aforesaid the full amount of the balance due on said agreement, which was endorsed thereon in full satisfaction thereof:

And whereas I, the said Francis, presented a petition to the Honorable Court of Common Pleas holden at Cleveland, in and for the County of Cuyahoga, at the term of February, 1818, setting forth the premises and praying for an order of said Court, appointing, authorizing and empowering me, the said Francis, as administrator as aforesaid, and for and in behalf of the heirs of the said Samuel to make, execute and deliver to the said Alfred a good and sufficient deed of the land above described, according to the stipulations and in performance and satisfaction of said agreement; and whereas, upon the hearing of said petition the facts above stated being made to appear to the satisfaction of the Court, it was thereupon, at the aforesaid term of said Court, ordered by said Court that I, the said Francis, be appointed, authorized and empowered to execute a deed of conveyance to the said Alfred agreeably to the stipulations of said agreement and agreeably to the prayer in said petition contained. All which premises will now fully and at large appear by reference to the records and files of said Court.

Now therefore, I, the said Francis Huntington, administrator on the estate of the said Samuel Huntington, deceased, in consideration of the premises, by virtue of the authority vested in me by the above recited order of said Court as administrator aforesaid, agreeably to the provisions of the Statute in such case made and provided, for and in behalf of the heirs of the said Samuel Huntington deceased, have given, granted, bargained, sold, aliened, released, conveyed and confirmed and by these presents do give, grant, bargain, sell, alien, release, convey and confirm unto the said Alfred Kelley the above described lots of land, excepting as hereinbefore excepted, according to the stipulations of said agreement above recited;

To have and to hold the above granted and bargained premises, with the appurtenances, unto him the said Alfred, his heirs and assigns, to his and their own proper use and behoof forever.

And I the said Francis, by virtue of the power vested in me as aforesaid, for and in behalf of the heirs of the said Samuel do covenant with the said Alfred, his heirs and assigns forever, that I have good right to bargain and sell the above described premises in manner and form as is above written, and that the same is free of all incumbrances whatsoever. And I the said Francis, by virtue of the authority vested in me as aforesaid, for and on behalf of said heirs of the said Samuel, do by these presents bind said heirs and their heirs forever, to warrant and defend the above granted and bargained premises unto him as fully and completely as I, by virtue of the power vested in me as aforesaid, can or ought to do.

249 In testimony whereof I have hereunto set my hand and seal this seventh day of March, 1818.

FRANCIS HUNTINGTON,

Adm'r on the Estate of Samuel Huntington.

Signed, sealed and delivered in presence of

JEDEDIAH HILLS.

MARY HILLS.

STATE OF OHIO,

Geauga County, ss:

PAINESVILLE, *March 17, 1818.*

Personally appeared Francis Huntington, signer and sealer of the within instrument, being personally known to me, and acknowledged the same to be his free act and deed, before me,

JEDEDIAH HILLS,

Justice of the Peace.

Received March 12th and recorded the 18th, 1818.

HORACE PERRY, *Recorder.*

And further to maintain the issues on its part, the plaintiff offered in evidence Deed recorded in Book B, page 172, a true copy of which is as follows, to wit:

"To all to whom these presents shall come, Greeting:

"Whereas Captain Russell Bissell of East Hartford in the State of Connecticut in consideration of fifty dollars paid by him to Augustus Porter, agent of the Connecticut Land Company, on the 22d day of October, 1796, to and for the use of said Company, has become entitled to a deed of conveyance from the trustees of said Company of all their legal estate and interest in and to the city lot No. twenty-five in the Township of Cleveland, in the County of Geauga, in the State of Ohio, containing two acres and five rods, being 10 chs. 6 links in length and 2.02 in width and is bounded north on Lake Street, west on Water Street, east on lot No. 26 and south on lot No. 49. Now, therefore, know ye, that we, John Caldwell, John Morgan, and Jona. Brace, trustees of the Connecticut Land Company, in pursuance of the constitutions, votes and proceedings of said Company and for the consideration aforesaid, do hereby remise, release, quitclaim and convey to said Bissell, his heirs and assigns, all the right, title and interest which we, the said Caldwell, Morgan and Brace as trustees aforesaid, have or ought to have in and to the above described premises,

250 "To have and to hold the same to him the said Bissell, his heirs and assigns forever to his own proper use, benefit and behoof.

"In witness whereof we have hereunto set our hands and seals this 18th day of August, A. D., 1806.

JONA. BRACE.	[L. s.]
JOHN CALDWELL.	[L. s.]
JOHN MORGAN.	[L. s.]

Signed, sealed and delivered in presence of

ELISHA COLT.
EPM. ROOT.

STATE OF CONNECTICUT, ss:

HARTFORD COUNTY, *August 18, 1806.*

Personally appeared John Caldwell, John Morgan and Jonathan Brace, Esquires, signers and sealers of the above instrument, and acknowledged the same to be their free act and deed. Before me

EPH. ROOT,
Just. Peace.

Received the 8th and recorded the 18th March A. D. 1816.

HORACE PERRY, *Recorder.*"

And further to maintain the issues on its part the plaintiff thereupon offered in evidence Deed recorded in Volume B, page 438, of Cuyahoga County Records of Deeds, a true copy of which is as follows, to wit:

"To all people to whom these presents shall come, Greeting:

Know Ye, That I, Jonathan Brace, of Hartford, in the County of Hartford and State of Connecticut, for the consideration of natural love and affection which I have for my son Thomas K. Brace, of said Hartford, do give, grant, bargain, sell and confirm unto the said Thomas K. Brace, and to his heirs, a certain piece or parcel of land, situate in that part of the State of Ohio called New Connecticut, in the town of Chardon, being tract Number Two in said township, which town is No. 9 in the tenth range. Said tract contains according to the original survey nine hundred and ninety-nine acres and twenty-nine one hundredths, but according to a late survey about nine hundred and eighty-nine acres and eight one hundredths, and according to the first survey is situated as follows, viz: Beginning at the southwest corner of tract number one at a post; thence west on the south line of said town 99 chs. 87½ lks. to a post, thence south 100 chs. 12½ — to a post; thence east 99
251 chs. 75 — to a post standing at the northwest of tract No. one; thence south by the west line of said tract No. one to the place of beginning, reference being had to said original survey, which tract contains all the land I own in said premises, or which is intended hereby to be conveyed, be the same more or less.

To have and to hold the above granted and bargained premises, with the appurtenances thereof, unto him the said Thomas K. Brace and to his heirs and assigns forever to his and their own proper use and behoof.

And also I, the said Jonathan Brace, do for myself, my heirs, executors and administrators, covenant with the said Thomas K. Brace and his heirs and assigns, that at and until the ensembling of these presents I am well seized of the premises as a good and indefeasible estate in fee simple, and have good right to bargain and sell the same in manner and form as is above written, and that the same is free from all incumbrances whatsoever. And furthermore I, the said Jonathan Brace, do by these presents bind myself and my heirs forever, to warrant and defend the above granted and bargained — to him the said Thomas K. Brace and to his heirs and assigns, against all claims and demands whatsoever.

In Witness Whereof I have hereunto set my hand and seal the twenty-first day of March, Anno Domini, 1817.

JONATHAN BRACE. [L. s.]

Signed, sealed and delivered in presence of
GEORGE W. PERKINS.
ENOCH PERKINS.

STATE OF CONNECTICUT,

** Hartford County, ss:*

MARCH 21ST, 1817.

Personally appeared Jonathan Brace, Esquire, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed. Before me

ENOCH PERKINS,
Justice Pacis.

Received and record- June 25, A. D. 1817.

HORACE PERRY, *Recorder.*

And further to maintain the issues on its part the plaintiff offered in evidence Deed from John Morgan, Jonathan Brace and John Caldwell, Trustees, to William Shaw, which deed is recorded in volume C, page 136, Trumbell County Records, as recorded
252 in the Recorder's office of Cuyahoga County, a true copy of same being as follows, to wit:

To all people to whom these presents shall come, Greeting:

Whereas, we John Caldwell, John Morgan and Jonathan Brace are Trustees for the Connecticut Land Company, as by an indenture made the fifth day of September, A. D. 1795 between the purchasers of the Connecticut Western Reserve of the first part, and us the said Caldwell, Morgan and Brace of the second part, reference thereto being had may more fully appear.

And whereas in consequence of a partition made by the Connecticut Land Company, in pursuance of the Constitution, votes and proceedings of said Company (reference thereto being had) at their meeting held the 28th day of December, 1802, William Shaw of Boston in the State of Massachusetts has become entitled to receive from us the said Trustees a conveyance of all our legal estate and interest in and to tract No. nine in the Township Mentor in the County of Trumbull and State of Ohio, containing twelve hundred and two acres 54,000-100,000, said tract begins at the N. E. corner of tract No. 5 at a post marked 5.8, thence west on the N. line of tract No. 5 173 chs. to the west line of the town, to a post marked 59; thence N. on the town line 70 chs. to a post marked 9.13; thence east on the line between 13 and 9, 172 chs. 95 lks. to a post marked 13.9; thence south 70 chs. to the place of beginning. To which is annexed 43 city lots in Cleveland (viz.) from lot No. 88 to 96 inclusive and from lot 100 to 133 inclusive. Therefore we the said John Caldwell, John Morgan and Jonathan Brace, in execution and fulfillment of the trust vested in us as aforesaid, do hereby remise, release, quitclaim and convey to the said Samuel Parkman and his heirs and assigns the aforesaid described premises apart and set off as aforesaid. To have and to hold the same to him the said Samuel Parkman his heirs and assigns forever to his own proper use, benefit and behoof.

In witness whereof we have hereunto set our hands and
253 seals this 30th day of May in the year of our Lord one thousand and eight hundred and three.

JOHN BRACE.	[L. S.]
JOHN CALDWELL.	[L. S.]
JOHN MORGAN.	[L. S.]

Signed, sealed and delivered in presence of
OLIVER KINGSBURY.
EPM. ROOT.

STATE OF CONNECTICUT,
Hartford County, ss:

HARTFORD, May 30, 1803.

Personally appeared John Caldwell, John Morgan and Jonathan Brace, Esquires, signers and sealers of the foregoing instrument and acknowledged the same to be their free act and deed, before me

EPM. ROOT,
Just. Pacis.

MAY 30, 1803.

I certify that Epm. Root, Esqr. who took the acknowledgement of the within deed is a Justice of the Peace for the County of Hartford, and by the laws of said State of Connecticut has full power and authority to take the acknowledgements of deeds, and that the within certificate is in his handwriting and that full faith and credit is due thereto in Court and Country.

[L. s.]

ENOCH PERKINS,
Not. Pub.

Recorded 23rd March, 1804, per me

JOHN S. EDWARDS,
Recorder.

And further to maintain the issues on its part the plaintiff offered in evidence Deed recorded in Volume C, page 185 of Trumbull County Records, a true copy of same being as follows, to wit:

To all people to whom these presents shall come, Greeting:

Whereas we John Caldwell, John Morgan and Jonathan Brace are Trustees for the Connecticut Land Company, as by an indenture made the fifth day of September, A. D. 1795 between the purchasers of the Connecticut Western Reserve of the first part, and us the said Caldwell, Morgan and Brace of the second part, reference thereto being had may more fully appear:

And Whereas in consequence of a partition made by the Connecticut Land Company in pursuance of the constitution,
254 votes and proceedings of said Company (reference thereto being had) Samuel Hinckley of Northampton in the Commonwealth of Massachusetts became entitled to receive from us the said Trustees, a conveyance of all our legal estate and interest in and to eighty-two dollars original purchase in lot No. eighty-five in Township No. five in the eleventh range containing one hundred and sixty-two acres, and 549-1000 and is bound as follows, viz: north on lot No. eighty-four, is 40 chs. 95 lks. east on lot seventy-five 39.87 south on lot No. eighty-six 40.62 and west on lots No. ninety-six, ninety-seven, and ninety-eight 39.84 which aforesaid lot was drew for, apated and set off to sd. Samuel Hinckley and John Worthington, Lemuel and Azabel Pomroy and Asa White, in the following proportion, viz: to said Samuel Hinckley eighty-two dollars, to John Worthington one thousand and six hundred dollars, to Lemuel and Azabel Pomroy, six hundred dollars, to Asa White seven hundred and eighteen dollars original purchase. Therefore

we the said John Caldwell, John Morgan and Jonathan Brace in execution and fulfillment of the trust vested in us as aforesaid, do hereby remise, release, quitclaim and convey to the said Samuel Hinckley and his heirs and assigns the aforesaid described premises aparted and set off as aforesaid. To have and to hold the same in the aforesaid proportion to him the said Samuel Hinckley, his heirs and assigns forever to his own proper use, benefit and behoof.

In witness whereof we hereunto set our hands and seals this 14th day of September in the year of our Lord one thousand seven hundred and ninety-nine.

JOHN CALDWELL.	[L. s.]
JOHN MORGAN.	[L. s.]
JONATHAN BRACE.	[L. s.]

Signed, sealed and delivered in presence of—

GEORGE PIERCE.
EPM. ROOT.

STATE OF CONNECTICUT,
Hartford County, ss:

HARTFORD, 14 Sept'r, 1799.

Personally appeared John Caldwell, John Morgan and Jonathan Brace, Esquires, signers and sealers of the foregoing instrument and acknowledged the same to be their free act and deed before me.

EPM. ROOT,
Justice Pacis.

Recorded Nov. 25th, 1807.

JOHN S. EDWARDS,
Recorder.

255 And further to maintain the issues on its part plaintiff offered in evidence Deed from William Tuckerman et al. to David Long, recorded in Volume D Cuyahoga County Records, page 55, a true copy of same being as follows, to wit:

This indenture made the tenth day of August one thousand eight hundred and twenty between William Tuckerman of Boston and Judy P. Tuckerman his wife, and Francis Shaw, heirs at law of William Shaw late of Quincy in the County of Suffolk, and the Commonwealth of Massachusetts, Esq. deceased, of the first part, and David Long of Cleveland, County of Cuyahoga and State of Ohio of the second part witnesseth, that the said parties of the first part for and in consideration of five hundred dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, sold, remise and quitclaimed and by these presents do grant, bargain, sell, remise and quitclaim unto the said party of the second part in his actual possession now being, and to his heirs and assigns forever, all those certain lots in what is called the City of Cleveland in the State of Ohio, known and distinguished on the map of said City as lots numbered 88, 89, 90, 91, 92, 93, 94, 95, 96, 100, 101, 102,

103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 217, 218, 129, 130, 131, 132, 133, in all 43 lots, being from No. eighty-eight to ninety-six, and from one hundred to one thirty-three inclusive, each lot supposed to contain two acres of land be the same more or less.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in any way appertaining being all the right, title, property, claim or demand whatsoever of them the said partise of the first part either in law or equity of, in and to the same and every part and parcel thereof to the said party of the second part his heirs and assigns to the sole and only proper use, benefit and behoof of the said party of the second part his heirs and assigns forever.

And be it further known that all the aforementioned lots of land were sold at one or more times, at auction, to pay taxes, and that the said David Long, it is presumed, was the purchaser, and has the lots in possession. That the aforementioned sum of five hundred dollars is in consideration of, and as a compromise for the relinquishment of any claim that we might have to said land.

256 In witness whereof the said William Tuckerman and Judy

P. Tuckerman his wife, for themselves, and the said Francis Shaw, by his attorney Robert G. Shaw, do hereunto set their hands and seals the day and year first above written.

WILLIAM TUCKERMAN. [L. s.]

JUDY P. TUCKERMAN. [L. s.]

FRANCIS SHAW,

By R. G. SHAW, *His Att'y.* [L. s.]

Signed, sealed and delivered in presence of us:

J. J. JEROME.

W. STEVENSON.

Witnesses to the signature of W. Tuckerman and F. Shaw:

G. TUCKERMAN.

W. STEVENSON.

To Judy P. Tuckerman.

COMMONWEALTH OF MASSACHUSETTS,

Suffolk County, ss:

Be it Remembered that on the tenth day of August one thousand eight hundred and twenty, Francis Shaw, by Robert G. Shaw, his attorney, and William Tuckerman and Judy P. Tuckerman his wife personally appeared before me and I having examined the said Judy P. separate and apart from her said husband, they respectively acknowledged the annexed instrument to be their voluntary act and deed for the uses and purposes therein mentioned. Given under my hand and seal the day and year aforesaid.

[L. s.]

WILLIAM STEVENSON,

Justice of the Peace.

Received and recorded the sixteenth day of December, 1820.

HORACE PERRY,
Recorder.

And further to maintain the issues on its part, the plaintiff thereupon offered in evidence the Deed recorded in Volume B, page 329, of Cuyahoga County Records, a true copy of which is as follows, to wit:

To all people to whom these presents shall come, Greeting:

Whereas, Lorenzo Carter, of Cleveland, in Trumbull County and Territory northwest of Ohio, by the payment of two hundred and eighty-five dollars and twenty-five cents, agreeable to con-
257 tracts entered into with the directors of the Connecticut Land Company, receipt whereof is hereby acknowledged, has become entitled to a deed of conveyance from the trustees of said Company for the following tracts of land lying in the City of said Cleveland, bounded as follows, viz: Beginning in the north line of Superior Street at the intersection of the west line of Water Street; thence north thirty-four degrees west in the line of Water street to the northeast corner of lot number one hundred and ninety-nine; thence westerly by said line to Cuyahoga river; thence southerly by the bank of said river to the north line of Mandrake Lane and Union Lane, thence crossing Mandrake Lane and running eastwardly on the northeast side of Union Lane to the place of beginning.

Also lots No. 25, 26, 27, 28, 29, and 30, which are bounded north on Lake Street, west on Water Street, south on the meridian line between Superior and Lake streets, and east on lot No. 31. Both the above tracts contain twenty-three and — half acres. Also two acres one hundred rods bounded as follows: Beginning at a stake standing on the east bank of the Cuyahoga about five rods up the river from David Bryant's still house; thence eastwardly fourteen rods to a post standing in the west line of Union Lane; thence south in the line of said Lane seventy degrees twenty-nine rods to a post at the intersection of Superior Lane; thence westerly in the north line of Superior Lane to the bank of the Cuyahoga; thence down said river three chains and 34 links to the first mentioned boundary. Also on two acre lot in said city, being lot fifty-four, bounded south by Superior Street, west by lot fifty three, north by the meridian line between Superior and Lake Street, and east by lot number fifty-five. Said lot is forty rods long and eight rods wide.

Now therefore, know ye, that we, John Caldwell, John Morgan and Jonathan Brace, Trustees of said Company, in pursuance of the articles of agreement, votes and proceedings of said company, and for the consideration aforesaid, do remise, release and quitclaim and convey to the said Lorenzo, his heirs and assigns forever, all the right, title, interest or demand, that we the said Caldwell, Morgan and Brace, as Trustees of said Connecticut Land Company ever had or ought to have in or to any of the aforesaid described lands.

To have and to hold to him the said Lorenzo, his heirs and assigns forever, to his and their proper use and behoof.

258 In Witness Whereof, we have hereunto set our hands and seals the eighth day of September, A. D. 1802.

JONATHAN BRACE. [L. s.]

JOHN MORGAN. [L. s.]

JOHN CALDWELL. [L. s.]

Signed, sealed and delivered in presence of:

EPM. ROOT.

HORACE COLT.

STATE OF CONNECTICUT,

Hartford County, ss:

September 8th, 1802. Personally appeared John Caldwell, John Morgan and Jonathan Brace, Esquires, signers and sealers of the foregoing instrument, and acknowledged the same to be their free act and deed. Before

EPM. ROOT,

Justice Pacis.

STATE OF CONNECTICUT,

Hartford County, ss:

September 8th, 1812. I, Enoch Perkins, a notary public for said County, duly apointed and sworn, do hereby certify that the acknowledgement of the foregoing deed was taken by Ephraim Root, Esquire, a Justice of the Peace for said County of Hartford, and that according to the laws and usages of said State of Connecticut the said Ephraim Root hath competent authority to take the acknowledgement of deeds within said County of Hartford.

In Testimony Whereof, I have hereunto set my hand and affixed my notary seal the day and year last above written.

[L. s.]

ENOCH PERKINS,

Nota. Pub.

Received November 14th, 1816, and recorded December 20th, 1816.

HORACE PERRY,

Recorder.

And further to maintain the issues on its part, the plaintiff offered in evidence from the record of the former trial, the testimony of HOWARD H. BURGESS, as follows:

By Mr. LAWRENCE:

Q. I will ask you first what your official position is?

A. City Clerk.

Q. Are you City Clerk of the City of Cleveland?

A. Yes, sir.

259 Q. How long have you been City Clerk?

A. Nearly ten years.

Q. State whether you have in your custody as City Clerk the books that you have with you?

A. Yes, sir, I have the records.

Q. Explain to the Court what those books are, beginning with the one you have in your hand?

A. This that I have in my hand is the record of the township of Cleveland from April 4, 1808, to April 6, 1838. I will have to explain that this is a copy which I have certified. The original is very yellow with age, and ragged, and this is a certified copy. The original I didn't bring over because it is so frail.

By the COURT:

Q. Certified by whom?

A. By myself.

By the COURT:

Q. Did you make it yourself or compare it?

A. I had it compared.

Mr. LAWRENCE: I understand under the law that *that* a certified copy by the City Clerk is evidence.

The WITNESS: I will read the certificate: "This is to certify that the contents of this book were carefully copied from the paper of the original record, which had become very badly defaced by time and neglect. The ink in the original was fast fading out, and the preservation of the record is thus preserved in its original condition, as far as a careful copy can so preserve it. Signed by Howard H. Burgess, City Clerk, January 23, 1891, and sworn to by Charles F. Leech, Notary Public." That is the only one of these records that is not the original record.

Q. Is the original record now in your office?

A. Yes, sir.

Q. I supposed that this was the original record. If there is any question about it we will send over and get it. You may go on with the identification of the books you have here?

A. (Indicating book.) This is the journal of the Common Council, April 15, 1836, to September 26, 1838.

Q. Common Council of what?

A. Of the City of Cleveland. This is the original record; it is designated "A."

By the COURT:

Q. That first book was not designated in any such way?

A. No, sir; it was the complete record of the township for 260 35 years. You will understand that these books have been rebound.

Q. (Indicating another book.) What is this book?

A. Journal C of the Common Council of the City of Cleveland, from December 8th, 1840, to March 14, 1845.

Q. (Indicating.) State what this book is?

A. Journal D of the Common Council of the City of Cleveland, from March 17, 1845, to May 9, 1848.

Q. (Indicating.) State what this is?

A. Journal E of the Common Council of the City of Cleveland, May 18, 1848, to March 19, 1852.

Q. (Indicating.) What is this book?

A. This is Ordinance Book A of the City of Cleveland. The first ordinance recorded in this book was passed April 23, 1836, signed by John W. Willey, Mayor, and Henry B. Payne, City Clerk.

By Judge SANDERS:

Q. How do you designate that book?

A. As Ordinance Book A, in which are kept written copies of ordinances passed by the Council. That is the first ordinance that is recorded in the book. The last ordinance recorded in this book was passed April 21, 1857; it covers 21 years.

Q. I will ask you whether you brought with you the records of the proceedings of the council of the Village of Cleveland?

A. This record that I read here is the record of the township of Cleveland from 1802 to 1838.

Q. Does that contain any record of the Village of Cleveland, or is it confined to the Township of Cleveland?

A. I haven't got the record of the village. There is a record of the Village of Cleveland some place, but I haven't got it.

Q. State whether it was in your custody as clerk at any time?

A. Not to my knowledge. I have never been able to find it; it is lost.

Q. What volume is that?

(Objected to.)

By Judge SANDERS:

Q. Did you ever see it?

A. I can't answer that. I know I have made efforts to secure it. I know it is lost, and I have made efforts by advertisement and search to discover it in the Court House, in the City Hall and other places—in law offices. Whether I ever saw it or not I can't answer.

By Judge SANDERS:

Q. How do you know it existed?

A. Oh, it is one of the missing records.

261 Q. I will ask you if there is any one in your office that has any more knowledge about that book than you have?

A. I think not. There have none of them been there as long as I have. There is perhaps somebody over there that was there previous to my term that could tell something about it.

Q. Are you able to state when the book was lost?

A. No, I am not. I think it was first called for some years ago, in some such litigation as this. At that time we searched for it and were unable to find it, and I have made efforts ever since.

Q. What do you say now as to there being in your office any records of the Village of Cleveland, from the organization of the village down to 1834?

A. There are numerous papers of various kinds over there, old papers; but there is no record, such as this, no record of any kind over there, no book record that I know of.

Q. Any Council proceedings record?

A. No Council proceedings record or book record that I know of.

Q. Did you bring the record of the Council of the village from 1834 to 1836 inclusive?

A. No.

Q. State whether that book is in your office?

A. No, I don't think so.

Q. That was called for in the subpoena?

A. I don't know. I think everything called for in the subpoena is here.

Q. I will ask you whether there is not in your office a record of the proceedings of the Council of the Village of Cleveland from the years 1834 to 1836 inclusive?

A. I am inclined to think there is some such record; I don't know. I don't think that was subpoenaed here anyhow.

Q. Will you have that sent over?

A. Yes, sir.

It is agreed between counsel that the witness may send over by a messenger, the record of proceedings of the Village Council from 1834 to 1836 inclusive, and that the proof as to its identification is admitted.

And further to maintain the issues on its part the plaintiff thereupon offered in evidence the proceedings of the City Council of the City of Cleveland, found in Journal A, page 72, under date of October 5, 1836, and read the same as follows, to-wit:

"Resolution to examine title Alfred Kelley's lot.

"Mr. Canfield offered the following:

262 "Resolved, That a committee of two be appointed to ascertain the situation of the title of the land granted under certain restrictions by Alfred Kelley, Esqr., to the former Village Trustees, and that said committee report the probable expense of building two piers, one at the foot of Water Street, the other about half way from Water Street to the Government Piers, provided it shall be found necessary; and that said committee be also authorized to ascertain what amount of money the owners of property in that vicinity will contribute towards the expenses of said pier. Agreed to. Messrs. Canfield and Smith appointed said committee."

And further to maintain the issues on its part the plaintiff thereupon offered and read in evidence an ordinance entitled

"An Ordinance to borrow money for the protection of the lake shore by grading and improving the streets near thereto in conformity to the nine and fifteenth sections of the City Charter," passed September 26, 1836, and found in Ordinance Book A, page 65, as follows, to-wit:

"SEC. 1. Be it ordained by the City Council of the City of Cleveland, That John W. Allen, Truman P. Handy and James R. Stafford

be and they are hereby authorized on behalf of said City, and upon the credit thereof, to borrow twenty thousand dollars on such terms as shall in their opinion be most for the benefit of said city (or any part thereof, under the direction of the City Council, for a term of years not exceeding ten. To be appropriated under the direction of the City Council to the protection of the lake shore by grading the streets adjoining thereto.

"SEC. 2. That all monies borrowed under the authority of this ordinance shall be deemed a Fund exclusively for the purposes aforesaid.

"SEC. 3. That for the payment of the interest and the final redemption of the principal sum of money to be borrowed as aforesaid, so much of the revenue of said City arising from an especial assessment of so much of the real estate thereof, as shall be by said City Council designated in conformity to the ninth section of the City Charter, be, and the same is hereby appropriated, and no other.

"SEC. 4. To facilitate the loan aforesaid the creation of the requisite stock is hereby authorized, if the same shall be adjudged expedient, and in such case upon the acceptance of the terms of any of the proposals for such loans, or any part thereof, the
263 lender or lenders shall receive a certificate of his or their respective loans, signed by the Mayor and countersigned by the Treasurer of said City, which certificate shall bear interest of not exceeding seven per cent. per annum, payable yearly or half-yearly, at such place or places as shall be prescribed by the loan, and shall be transferred by endorsement thereon.

"But no loan shall be negotiated by virtue of this section whereby said certificates shall be computed at less than the sum specified, at par.

"Passed September 26, 1838.

"J. MILLS, Mayor.

"A. H. CURTIS,
"City Clerk."

And further to maintain the issues on its part the plaintiff thereupon offered in evidence the Resolution of the Council adopted April 21, 1841, found in Journal C of Council proceedings of the City of Cleveland, at page 67, as follows:

"Mr. Bolton offered the following: Resolved, that the City Clerk be, and is hereby instructed to cause an exact copy of the original survey made by said Seth. Pease in 1796 of the City of Cleveland, to be recorded in the records of said city, together with the map of said city streets, etc., and also that the Clerk cause the original survey of Seth. Pease made in 1796 of the Western Reserve east of the Cuyahoga River, together with such authentication of the same as may be furnished, to be recorded in the records of Cuyahoga County, together with the maps and highways thereof. Adopted."

And further to maintain the issues on its part the plaintiff thereupon offered in evidence resolution of April 22, 1843, found in Journal C of the Council proceedings of the City of Cleveland, at page 258, as follows:

"By Mr. Clary, petition of H. Camp for using the public land at the foot of the piers as a coal yard, accompanied by a resolution directing the Committee on Public Grounds to lease said petitioner the land conditionally. Mr. Nott moved to amend by authorizing said Committee to report, instead of leasing. The resolution was finally amended by striking out leasing and adding the words permitting Mr. Camp to use, etc. Adopted."

And further to maintain the issues on its part the plaintiff thereupon offered in evidence the record of the proceedings of the Common Council of the City of Cleveland of date July 5, 1843, found in Journal C, page 284, of Council proceedings, as follows:

264 "Mr. McCurdy introduced a resolution directing the marshal to notify Levi Johnson to remove his buildings on Bath Street within three weeks, and, in default thereof, to remove said buildings himself, at the expense of the City. Referred to Judiciary."

And further to maintain the issues on its part the plaintiff thereupon offered in evidence the record of proceedings of the Common Council of the City of Cleveland, under date of August 9, 1843, found in Journal C of Council proceedings, at page 291, being the report of the Judiciary Committee, as follows:

"The Judiciary Committee, through its Chairman Mr. Williamson, to whom was referred Mr. McCurdy's resolution for clearing Bath Street, reported, accompanied with the annexed resolution: Resolved, that the City Marshal be, and he is hereby directed to notify Levi Johnson and all other persons occupying any portion of Bath Street, to remove their buildings or other incumbrances therefrom on or before the 1st day of September next, and in default of their compliance therewith, that he remove the same forthwith thereafter, and report the expense to the Council. Adopted."

Plaintiff also offered the following, under date of March 27, 1844, found in Journal C of Council Proceedings, page 345:

"The petition of I. F. Warner for permission to occupy the wharf at foot of Bath Street upon such terms as may be agreed upon. Referred to Committee on Harbor, Wharves, etc."

Also the following, under date of March 27, 1844, found in Journal C, page 346:

"Resolution by Mr. Warner, requesting the Marshal to report what action if any he has had upon a resolution passed by the former Council in relation to moving off buildings from Bath Street. Adopted."

And further to maintain the issues on its part the plaintiff offered in evidence an act of the General Assembly of Ohio, recorded in Vol. 43, Local Laws, page 3, and a true copy of same is as follows, to-wit:

"An act to amend an act entitled "An act to incorporate the City of Cleveland."

SEC. 1. Be It Enacted by the General Assembly of the State of Ohio, That the City Council of the City of Cleveland shall have full

265 power and authority to construct wharves, docks, and slips, upon or in any portion or portions of the streets of said city, adjacent to the Cuyahoga river, or Lake Erie, reserving free from obstruction such portions of said streets as shall, in their opinion, be required for public use.

"SEC. 2. That said city council shall also have full power to lease any portion or portions of said streets, not, in their opinion, required for public use, or any wharves, docks, or slips, constructed upon or in the same upon such terms, and for such periods, not exceeding ten years, in any one lease, as to them shall seem expedient; and all rents and profits accruing from such leases shall be set apart as a fund to be expended in improving the wharves and streets of said city.

JOHN M. GALLAGHER,
Speaker of the House of Representatives.
DAVID CHAMBERS,
Speaker of the Senate.

DECEMBER 21, 1844.

And further to maintain the issues on its part, plaintiff thereupon offered in evidence the following, from Journal C of the Common Council, page 348, under the heading of

"Petitions Presented."

Regular Meeting, April 3rd, 1844.

Present: The Mayor, Messrs. Allen, Barnett, Bemis, Floyd, Goodwin, Hubby, Lowman, Marshall, Mill, Outhwaite, Stetson & Warner.

To Lease Bath Street.

Application of H. Camp, for privilege of occupying that portion of Bath Street heretofore occupied by him, on such terms as the Council may prescribe. Ref'd to Harbor Master.

JAMES B. FINNEY,
City Clerk.

Also the following from Journal C, page 355.

Regular Meeting April 10th, 1844.

General Business.

Present the Mayor, Messrs. Allen, Barnett, Bemis, Floyd, Marshall, Mill, Outhwaite, Stetson & Warner.

Renting Bath St.

Mr. Barnett moved that the application of H. Camp be taken from the Harbor Master to permit the occupation of the grounds at

the foot of Bath Street to the person who will pay most for the use of the same for the ensuing season. Passed.

JAMES B. FINNEY,
City Clerk.

266 Also the following from Journal C, page 363:

APRIL 24, 1844.

Bath Street Rented.

Report of Harbor Master.

That he had received proposals for use of the grounds at the foot of Bath Street for the ensuing season, and the bid of J. F. Warner (\$305) being the highest he had had given him permission to occupy the same. Accepted and filed.

WILLIAM I. MAY,
Clk Pro Tem.

Also the following from Journal C, page- 363-4:

APRIL 24, 1844.

Resolutions.

Bath Street Rented.

Mr. Bemis offered one authorizing Harbor Master to permit the use of the land at the foot of Bath Street to Jno. F. Warner from the first day of May next.

Mr. Goodwin moved to lay the resolution on the table and called for the ayes and noes, which were:

Ayes, Messrs. Goodwin and Marshall, 2. Noes, Messrs. Allen, Bemis, Floyd, Hubby, Lowman, Nell, Outhwaite & Stetson, 8. On the adoption of the resolution: Ayes, Messrs. Allen, Bemis, Floyd, Hubby, Lowman, Nell, Outhwaite and Stetson, 8. Noes, Messrs. Goodwin and Marshall, 2. Adopted.

WILLIAM I. MAY,
Clk Pro Tem.

Also the following from Journal C, page 273:

MAY 28, 1844.

Reports of Committees.

Bath Street.

Mr. Floyd from same Com. made a verbal report on the surveying of Bath Street, and presented a plat of the survey of said street. Accepted.

J. B. FINNEY,
City Clerk.

Also the following from Journal C, page 367:

MAY 1ST, 1844.

Resolution.

Bath Street.

By Mr. Bemis instructing Marshal to clear Bath Street of wood and coal owned by Mr. H. Camp. Mr. Goodwin moved to amend by inserting "and of all other incumbrances upon said street." Upon which question the ayes and noes were called and resulted as follows: Ayes, Messrs. Goodwin, Marshall and Nell, 3. Noes, 267 Messrs. Allen, Barrett, Bemis, Floyd, Hubby, Lowman, Outhwaite and Warner, 8. Amendment lost.

Mr. Hubby moved to amend by striking out all after the word "resolved" and inserting "That the Committee of Streets be directed to cause a survey of Bath Street, and place proper marks, defining said street, and that the marshal be directed to clear said street of all obstructions except such as the Council have permitted to be placed upon some part of said street."

The resolution being divided the first proposition therein contained was Carried.

The vote was then taken upon the latter branch of the resolution. Carried.

Ayes, Messrs. Allen, Barrett, Bemis, Lloyd, Hubby, Lowman, Nell, Outhwaite and Warner, 9. Noes, Goodwin and Marshall, 2.

J. B. FINNEY,
City Clerk.

Also the following from Journal C, page 385:

JULY 24, 1844.

Reports and General Business.

H. Master Collect Bath St. Rents.

Mr. Goodwin presented the following resolution for adoption.

Resolved, that the Harbor Master be and is hereby instructed to collect forthwith of the occupants of Bath Street, fronting on the river one-half of the sum agreed to be paid for the occupation of the same, and that he collect the other half in four equal monthly payments commencing at the first of September next, and that in default of payment by said occupants agreeable to this resolution that the permit now granted to said occupants be null and void. Laid on the table by the following vote:

Ayes, Messrs. Barrett, Bemis, Lowman, Outhwaite and Warner, 5. Noes, Messrs. Goodwin and Nell, 2.

J. B. FINNEY,
City Clerk.

Also the following from Journal C, page 482:

JAN. 10, 1845.

Resolutions.

Bath Street.

By same member (Stetson) that a committee of three be appointed by the chair to examine and report.

1st. What portion of Bath Street is required to be kept free from obstruction for public use.

268 2nd. What improvements, if any, it is expedient for the City to make on said street.

3rd. What method it is expedient to adopt for using or renting such portion of said street as shall not be necessary for public use. Adopted.

Messrs. Stetson, Mell and Allen appointed said Committee.

JAS. B. FINNEY,
City Clerk.

Also the following from Journal C, page 424:

JANUARY 24, 1845.

Reports.

Bath Street.

Mr. Stetson from special Com. on Bath Street made a partial verbal report showing the divisions proposed upon said street and asking further time upon that part which relates to leasing said property.

J. B. FINNEY,
City Clerk.

Also the following from Journal C, page 425:

JANUARY 24, 1845.

Resolutions.

Bath Street.

By Mr. Hubby directing Bath Street Com. to procure a map of said street for record showing the division of the property out lots and streets agreeably to their report, made verbally this evening and caused posts to be set at the corners of the reserved lots. Adopted.

JAS. B. FINNEY,
City Clerk.

Also the following from Journal C, page 427:

JANUARY 31, 1845.

Presentations.

Bath Street.

Communication of T. B. W. Stockton, on matters connected with Bath Street.

Referred to Com. on H. W. and Public Grounds.

Reports.

Bath Street.

Com. on Harbors report on T. B. W. Stockton's Com. by resolution directing street supervisor to take immediate measures to remove the buildings erected by a Mr. Papineau on Bath Street. Adopted.

JAS. B. FINNEY,
City Clerk.

Also the following from Journal C, page 428:

FEB. 7, 1845.

269

Presentations.

Act Amending City Charter as to Bath Street.

Act amendatory to the City Charter duly attest'—giving the Council authority to lease streets adjacent to river or lake &c. Ordered recorded.

JAS. B. FINNEY,
City Clerk.

Also the following from Journal C, 429:

FEB. 7, 1845.

Resolutions.

Bath St. Leases, How Drawn.

By Mr. Stetson, that in leasing lots upon Bath St., no lease shall be so drawn as to render the City liable to pay damages in case of failure of title or disturbance of the possession of lessees. But that in case any lessee shall lawfully be turned out of possession by any person or persons claiming adversely to the City, all rent shall cease from and after the lessee shall be so ejected. Adopted.

(Same meeting, same page.)

J. F. Warner & Bath Street.

By Mr. Bemis that a Com. of three be appointed by the chair to examine the matters in controversy with J. F. Warner and Company for the occupancy of the Bath Street grounds the past year &c. Adopted.

(Same meeting, same page.)

Reports of Select Com. on Bath Street.

Report on Bath Street Survey & Renting, &c.

Said Com. report that they have caused a survey and plat of said premises to be made which accompanies the report; and recommended leasing said premises for a term not exceeding three years, renewable on payment of an annual valuation, uses defined or limited, and inviting sealed proposals by publication; also by resolution instructing City Clerk to insert a notice, in the Herald and Plain Dealer, appended to the report. Report accepted and res. adopted.

JAS. B. FINNEY,
City Clerk.

Also the following from Journal C, page 432:

FEB'Y 21, 1845.

Reports.

Bath St. Monies.

Of Harbor Master showing amt. of moneys by him received for the use of streets terminating on river.

Ordered filed.

(Same page.)

270

Resolutions.

Bath Street Occupants.

By Mr. STETSON: That in all proposals for leasing lots upon said premises persons occupying lots upon said premises shall be preferred when the terms proposed by different persons for the same lot or lots shall be equal. Adopted.

Adopted.

(By same member.)

When 2 or More Lots to be Leased, etc.

That when any person or persons shall propose for two or more lots to be used in connection such proposition shall be considered

entire and compared with the aggregate sum offered for the same lots separately. Adopted.

Adopted.

(By same member.)

When 2 Persons Wish the Same Lot.

That when two or more persons shall severally propose for the same lot or lots, the proposition not accepted may be transferred by the person proposing, to any other lot or lots in the same block for which no propositions have been made.

Adopted.

(By same member.)

No Sale of Liquor on Bath Street.

That all leases for lots upon Bath Street, shall contain a provision prohibiting the sale of spirituous liquors on the premises so leased under the penalty of forfeiture.

Referred to Select Com. consisting of Messrs. Bemis, Floyd and Mell.

C. BRADBURY,
Clerk Pro Tem.

Also the following from Journal C, page 435:

FEB. 22, 1845.

Reports.

Liquors to be Not Mentioned in Bath Street Leases.

Of select Com. to whom was ref'd a resolution proposed by Mr. Stetson to the effect that all leases for lots on Bath Street shall contain a provision prohibiting the sale of spirituous liquors (presented by Mr. Bemis.) Said report declared too inexpedient to insert the clause proposed &c.

Accepted.

JAS. B. FINNEY,
City Clerk.

Also the following from Journal C, page 436:

FEB. 22, 1845.

271

Resolutions.

Bath Street Proposals.

One by Mr. Stetson instructing Clerk to give notice that proposals will be received at the next meeting of the Council, for the use of the unoccupied ground upon that part of Bath Street adjacent to the Lake, for fishing purposes; to be divided into two parts by the east line of lot No. 25 extended to the Lake.

Adopted.

The several propositions for leasing lots on Bath Street were opened by the Mayor and read. Mr. Bemis moved to reject the proposition of M. B. Scott.

Carried.

To Classify Bids.

Mr. Allen the appointment of a Com. of three to classify the bids and report names of highest bidders.

Carried.

The chair appointed Messrs. Allen, Floyd and Marshall.

Bath Street Bids.

The Com. after having returned, reported the following names as being the highest bidders:

John G. Stockley for lots 1, 2, 3 and 4 \$400 per year.

Michael David for lot No. 6, \$125 per year.

John Snyder for lots 5, 7 and 8 \$240 per year.

Papineau for lots 15 & 16 \$0.50 per year.

Thos. Shadwick for lots 17 \$0.50 per year.

Report accepted.

Securities & Lease.

Mr. Floyd moved that a Com. of three be appointed to examine and report upon securities offered and also the form of a lease.

Adopted and Messrs. Floyd, Marshall and Stetson appointed said Com.

JAS. B. FINNEY,

City Clerk.

Also the following from Journal C, page 439:

FEB'Y 28, 1845.

Reports.

Form of Lease.

Of Select Com. to whom was referred to form of a lease for Bath Street and to report on the security offered; after striking out one clause it was adopted.

272 For striking out ayes and noes being called by Mr. Goodwin votes stood Ayes, Messrs. Allen, Barrett, Bemis, Goodwin, Hubby and Outhwaite. 6. Noes. Messrs. Floyd, Lowman, Marshall, Stetson, Warner. 5.

Carried.

Form of lease adopted by the following vote: Ayes, 11; Noes, 0.

J. F. WARNER,

Clerk Pro Tem.

Also the following from Journal C, page 444:

MARCH 4, 1845.

Resolutions.

Bath Street Leases.

On motion of Mr. Stetson the Mayor was authorized to execute leases for Bath Street, on receiving payment for rents or securities already accepted.

JAMES B. FINNEY,
City Clerk.

Also the following from Journal C, page 445:

MARCH 4, 1845.

Presentations.

Bath Street.

Petition of P. M. Weddell and others for grade of Bath Street. Disposed of by resolution. Proposal of Geo. C. Wild, for the west fishing ground on Bath Street offering \$30 per year and proposing the name of H. C. Morris as surety.

Disposed of by resolution.

Also the following from Journal C, page 446:

MARCH 7, 1845.

Lease of Fishing Ground.

By same member (Stetson) accepting the proposal of George C. Wild, for the west fishing ground on Bath Street for the term of three years.

Adopted.

L. L. STONE,
Clerk Pro Tem.

And further to maintain the issues on its part, plaintiff thereupon offered in evidence the following ordinance of the City of Cleveland, recorded in Ordinance Book A at page 144:

An Ordinance Establishing Rates of Charges on the Public Docks and Providing for the Collection of the Same.

273 "SEC. 1. Be it ordained by the City Council of the City of Cleveland, That all goods or other property hereafter landed on any Steam Boat, Canal Boat, vessel, or other water craft, or unloaded, or deposited from any dray, cart, wagon or other vehicle, upon the Public Docks of the City at the foot of the streets except such as are 100 feet north of the south line of Bath Street, shall be subject and liable to charges as follows:

"On dry goods in boxes or bales 3 cents per 100 pounds. On groceries, hardware, drugs, medicines, crockery, and glassware, two cents per 100 pounds. On furniture three cents per barrel bulk. On iron, steel, nails and spikes, one cent per 100 pounds. On grindstones and pig iron $12\frac{1}{2}$ cents per 1,000 pieces. On wood $6\frac{1}{4}$ cents per cord. On cedar posts 25 cents per cord. On lumber $12\frac{1}{2}$ cents per 1,000 feet. On lime or sandstone 25 cents per ton. On plaster $12\frac{1}{2}$ cents per ton. On sand and brick $12\frac{1}{2}$ cents per wagon load. On pork, beef and fish, 3 cents per barrel. On salt, 2 cents per barrel. And on all other articles not enumerated, rates of charges proportionate to the foregoing for the first 36 hours, and 50 per cent. on the aforesaid charges for every 24 hours thereafter.

SEC. 2. That the owner or driver of any cart, dray, or wagon or other vehicle, or the master of any steamboat, vessel or canal boat, or any other person, who shall remove any goods, or property landed or deposited on the public docks, or wharves of the city without the permission of the Harbor Master, or the deputy Harbor Master, shall be held liable and bound to pay the charges established by the first section of this ordinance, together with 50 per cent. penalty thereon to be recovered in an action of debt before the Mayor.

"SEC. 3. That it be duty of the Harbor Master, or deputy Harbor Master to collect all the charges and penalties imposed by this act, and that he be allowed ten per cent. on all monies so collected where the amount collected exceeds one dollar, and twenty per cent. on all sums less than one dollar.

Passed July 10, 1847.

F. W. BINGHAM,
President of the Council.

LEONARD CASE,
City Clerk Pro Tem.

And further to maintain the issues on its part, plaintiff thereupon offered in evidence the following ordinance of the City of Cleveland, recorded in Ordinance Book A, at page 146:

274 Ordinance to Prevent the Removal of Enclosures in Bath Street.

"SEC. 1. Be it ordained &c. that it shall be unlawful for any person or persons to remove, injure in any manner or destroy any posts, railing, fence, bars, lock-bars, or any erection which has been or may be hereafter made by order of the City Council, designed for the protection of the pier, or other purposes, north of the south line of Bath Street.

"SEC. 2. Any person or persons violating the provisions of this ordinance, upon conviction thereof before the mayor of the city, shall be liable to pay a fine of \$50.00: $\frac{1}{2}$ of the whole shall be paid to the complainant, and the other half into the city treasury.

"Passed Sept. 18, 1847.

J. A. HARRIS, *Mayor.*

JOHN COON,
City Clerk."

And further to maintain the issues on its part, plain- offered in evidence the following from Journal E, page 5:

MAY 25TH, 1848.

Resolutions.

Clerk, &c., Bath Street.

Mr. Case introduced the following:

Resolved, That the clerk be authorized to draw orders in payment of the grading work on Bath street 25 per cent. in addition to the 66 per cent. already or which may be allowed on estimates for work then done, provided the contractor & surety so arranged that money goes to the laborers. Adopted.

Ayes, 11. Nays, 0.

Also the following from Journal E, page 6:

(Same Meeting.)

Rhodes Lease.

Mr. Seymour offered the following which was adopted:

Resolved: That twelve feet of the lot fronting the pier adjoining and connecting with the U. S. Government office, appropriated especially for government use be leased to Dan'l P. Rhodes for the present year at the rate of five dollars per foot, subject to the wants of said government, that the use of said lot be limited to eighty feet in depth, provided the occupancy of so much of said lot does not injure or impair any of the improvements or property of the U. S. Government or its right.

275

Camp Lease.

Mr. Seymour offered the following which was adopted: Resolved, That in the matter of the petition of Y. C. Camp, that the prayer of said petition be granted; and that a lease be executed according to the terms and conditions therein stated, subject to the wants of the U. S. Government or its agents.

JOS. B. BARTLETT, *Clerk.*

Also the following from Journal E, page 17:

JUNE 22, 1848.

Claims.

Claims Bath Street.

Of Daniel McGillicuddy for 68 days' labor of 8 men on Water and Bath Streets at 75 cents per day, and 8 days' employment of 2 double teams at \$4 per day.

\$83. Referred to Committee on Streets.

Also the following from Journal E, page 23:

JULY 3, 1848.

Resolutions.

Bath Street Improvement Preserved.

By Mr. SEYMOUR: Resolved, that whenever the work to be done in Bath Street contracted for with Daniel McGillicuddy, is completed and accepted according to said contract, that the committee on streets be authorized to cause whatever street piling and planking or such other work to be done as may be necessary to preserve and keep in good condition and repair the improvement on said street—said work to be done by the street supervisor or others, as the committee may direct.

Adopted.

Bath Street Laborers Protected.

By Mr. CASE: Resolved, That in order to protect the laborers upon the grade of Bath Street, the contractor and his surety be requested to draw orders upon the amount to be paid them by the city on their contract in favor of said laborers and others furnishing materials, and that the clerk pay such an amount of said orders as are certified to on the back by the chairman of the street committee, as safe to be paid in view of a final settlement of said contract.

Adopted. Ayes 7, nays, 0.

J. B. BARTLETT, *Clerk.*

Also the following from Journal E, page 26:

JULY 13, 1848.

276

Resolutions.

McGillicuddy, Bath Street, and a Settlement.

Mr. Gordon offered the following resolution: Resolved, That the chair appoint a special committee of three, and that said committee be authorized to effect a settlement with Mr. McGillicuddy for grading Bath street; and for any extra work he may have done on said street, not included in his contract; and that they be authorized to pay any balance that they may agree upon, out of the Bath street fund. The following amendment was offered: "and that the clerk be authorized to issue an order for the amt. on the requisition of said special committee." The vote was taken on resolution and amendment separately, and both adopted by the following vote:

Ayes—Case, Gordon, Gill, Hubby, Payne, Parks, Reed, Starkweather and Seymour—9. Nays—0.

Messrs. Gordon, Case and Seymour were appointed said special committee.

J. B. BARTLETT, *Clerk.*

Also the following from Journal E, page 32:

JULY 27, 1848.

Galligher and His Lease on Bath Street.

By Mr. SEYMOUR: Resolved, That the city attorney be directed to cause a lease to be executed to Galligher for the lot in Bath street recently occupied by Mrs. Keeler on the usual conditions at one dollar per foot; lease to expire five years from last spring. Adopted.

J. B. BARTLETT, *Clerk*.

Also the following from Journal E, page 40:

AUGUST 26, 1848.

Resolutions.

Gutters and Spring on Bath Street.

By Mr. HUBBY: Resolved, That the street supervisor (under the direction of the committee on streets), be directed to immediately complete the gutter on Bath street, by plank curbing and street piling; and take up the springs on said street, and carry the water from said springs and the gutter, under the street near the point of the hill and carry the same into the lake or into the sand near the lake. Adopted—Ayes 8, nays 0.

J. B. BARTLETT, *Clerk*.

Also the following from Journal E, page 45:

SEPTEMBER 19, 1848.

277

Resolutions.

Bath and River Streets.

By Mr. PAYNE: Resolved, That the supervisor, under the direction of the street commissioner, be authorized and directed forthwith to improve the road at the junction of Bath and River streets, by making an underground wood sewer, to carry off the water into the lake or river, as may be found best, and filling up the ground at the point named in such a manner as will make the road passable for those using those streets.

Referred to committee on streets.

Bath and Wall Streets Roadway.

By Mr. SEYMOUR: Resolved, That a roadway from Wall street into the present grade in Bath street, according to a plan and estimate submitted by Ahaz Merchant, be opened and constructed, under the direction of the committee on streets, at a cost not exceeding said estimate to be paid out of the receipts for rents after the first of January next.

Laid on the table.

Bath Street Fund Annihilated.

By Mr. HUBBY: Resolved, That the clerk be directed to draw an order on the Bath street fund for the money now remaining in that fund, and that the same be paid into the road fund. Adopted—Ayes 9, nays 0.

J. B. BARTLETT, *Clerk.*

Also from Journal E, page 52:

OCTOBER 24, 1848.

Petitions.

Bath Street C., C. & C. Railroad.

Of James F. Clark, N. E. Crittenden and 320 others, citizens of Cleveland, and stockholders of the C., C. & C. railroad, remonstrating against said railroad company, making use of Bath street, for the purpose of locating their depots and workshops thereon. Referred to select Committee—Messrs. Starkweather, Seymour and Hubby.

J. B. BARTLETT, *Clerk.*

Also the following from Journal E, page 92:

FEBRUARY 22, 1849.

Reports.

J. B. Enos and Geo. Wild and Fishing Ground.

Of Mr. Seymour—from com. on public grounds in favor of renewal of lease executed to J. B. Enos and Geo. Wild for fishing grounds—accepted and adopted at the last meeting, was called up by same committee, reconsidered and rescinded, and the whole matter referred back to same committee.

J. B. BARTLETT, *Clerk.*

Also the following from Journal E, page 113:

MARCH 17, 1849.

Resolutions.

West Fishing Ground.

By Mr. SEYMOUR: Resolved, That the city attorney be required to execute a lease to Geo. G. Wild for the term of one year for the West Fishing Ground in Bath street, as provided for in the report on public grounds. Adopted.

J. B. BARTLETT, *Clerk.*

J. B. BARTLETT,

City Clerk.

(Same meeting, same page.)

Resolutions.

J. W. Fitch Fees and Commissions.

By Mr. HUBBY: Resolved, That the mayor be directed to draw an order on the treasurer for \$13.09 in favor of J. W. Fitch, city attorney and agent for the collection of Bath street rents—being balance due him for fees and commissions. Adopted.

Ayes 10, nays 0.

J. B. BARTLETT, *Clerk.*

Also the following from Journal E, page 123:

MARCH 22, 1849.

Resolutions.

\$150, Allowed J. G. Stockley.

By Mr. CASE (from committee on streets recommending its adoption): Resolved, That the sum of one hundred and fifty dollars be allowed to J. G. Stockley on his rent account with the city accruing after the 1st of April next; provided said Stockley proceed to grade and improve that portion of Bath street surveyed and reported upon by Ahaz Merchant, for the purpose of furnishing access to the beach and the lake, according to said survey and estimate; provided also said Stockley take up the springs passing under said improvements, keep the work in repair one year, and perform the whole to the acceptance of the committee on streets.

Adopted. Ayes 12, nays 0.

J. B. BARTLETT, *Clerk.*

Also the following from Journal E, page 127:

MARCH 29, 1849.

279

Reports and Resolutions.

Bath Street Drain.

By Mr. Seymour, directing street supervisor to place additional plank to the drain on Bath street. Referred to street committee.

J. B. BARTLETT, *Clerk.*

Also the following from Journal E, page 129:

APRIL 10, 1849.

Petitions, &c.

D. P. Rhodes and Bath Street Lease.

Petitions, &c., of D. P. Rhodes, asking lease of the few feet ground between the government house and F. W. Gibbons' lot at the pier. Referred to Committee on Wharves and Public Grounds.

J. G. Stockley and a Plank Road to the New Pier.

Of J. G. Stockley, asking permission to lay down a plank road from Commercial street where it intersects River street up through Bath street to the new pier. Referred to Committee on Streets.

J. B. BARTLETT, *Clerk*.

Also the following from Journal E, page 130:

APRIL 10, 1849.

Petitions, &c.

M. Down and Bath Street.

Of Mr. Down—For removal of obstructions on Bath street near the pier. Referred to Committee on Wharves and Public Grounds.

J. B. BARTLETT, *Clerk*.

Also the following from Journal E, page 135:

APRIL 24, 1849.

Resolutions.

Lease to H. S. Whitman.

By Mr. SEYMOUR: Resolved, That twelve feet of the lot fronting the pier adjoining and connected with the United States Government office appropriated especially for government use, be leased to H. L. Whitman for the present year at the rate of five dollars per foot, subject to the wants of said government, that the use of said lot be limited to eighty feet in depth, provided the occupancy of so much of said lot does not injure or impair any of the improvements or property of the U. S. Government or its rights—the conditions of payment—the same as other leases.

Adopted.

J. B. BARTLETT, *Clerk*.

Also the following from Journal E, page 137:

MAY 8TH, 1849.

Petitions.

Occupation of Bath Street.

Of D. A. Eddy—For privilege of occupying rear of lots No. 20, 21 and 22, Bath street, for storing hogs and cattle convenient for shipping for compensation. Referred to Committee on Public Grounds.

J. B. BARTLETT, *Clerk*.

Also the following from Journal E, page 139:

MAY 8, 1849.

Reports.

Bath Street and J. G. Stockley.

Mr. Case, from same committee, in favor of petition of J. G. Stockley (to plank a portion of Bath street) on certain conditions.
Accepted and adopted.

J. B. BARTLETT, *Clerk.*

Also the following from Journal E, page 146:

MAY 22, 1849.

Petitions.

Crawford and Price and Pier Into the Lake.

Of Crawford & Price, asking a lease of 150 feet of ground near the termination of Spring street with Bath street, for the purpose of building a pier into the lake. Referred to Committee on Wharves and Public Grounds.

J. B. BARTLETT, *Clerk.*

Also the following from Journal E, page 233:

FEBRUARY 5, 1850.

Resolutions.

Secretary of C., C. & C. Ry. Co. Appointed Collector of Bath Street Rents.

By Mr. CROSS: Resolved, That the secretary of the Cleveland, Columbus & Cincinnati Railroad Company, for the time being, is hereby appointed the agent at the office of said company, for the management and collection of the Bath street rents, reserved in the leases assigned to said railroad company by resolution of the City Council of September, 1849. Provided that said secretary be required to pay over to the city treasurer that portion of said rents which were reserved to the city in the agreement with said company.

Adopted.

J. B. BARTLETT, *Clerk.*

Also the following from Journal E, page 260:

MARCH 26TH, 1850.

Resolutions.

Bath Street Back Rents and City Attorney.

By Mr. HUGHES: Resolved, That the city attorney proceed forthwith to collect the back rents on Bath street leases—under the direction of the Committee on Claims. Adopted. Ayes 10, nays 0.

J. B. BARTLETT, *Clerk*.

And further to maintain the issues on its part, the plaintiff offered in evidence a map of the mouth of the Cuyahoga river, exhibiting the plan for the removing of obstructions at its entrance, by T. W. Morris, captain of engineers, made July 1st, 1827, certified as being a copy from the War Department, showing the improvements made by the government when it cut through the present channel of the river.

Said map was marked "Plaintiff's Exhibit 3," and is hereto attached and made a part hereof.

And further to maintain the issues on its part, the plaintiff offered in evidence a map made August 29, 1845, by T. B. W. Stockton, map of the mouth of the Cuyahoga river, showing how far Bath street extended in 1845.

Said map was marked "Plaintiff's Exhibit 4," and is hereto attached and made a part hereof.

And further to maintain the issues on its part, the plaintiff offered in evidence map made October 3, 1898, of Cleveland harbor, showing the harbor line.

Said map is hereto attached and made a part hereof, and marked Plaintiff's Exhibit 5.

And further to maintain the issues on its part, the plaintiff read in evidence testimony of OTTO DERGUM, as follows:

By Mr. LAWRENCE:

Q. What is your name?

A. Otto Dergum.

Q. What is your employment?

A. Assistant engineer and chief draughtsman in the city engineer's office.

Q. Of the City of Cleveland?

A. Yes, sir.

282 Q. How long have you been employed in the office of the city engineer?

A. Since 1868.

Q. What was your position when you first went into the office?

A. Draughtsman and surveyor.

Q. How long have you been the chief draughtsman?

A. Fifteen years, I have been.

Q. I hand you a book, and ask you to tell what book that is and where it came from?

A. That is volume one of Maps and Profiles of the city of Cleveland.

Q. You may state where that book is kept?

A. It is kept in our office—the city engineer's office.

Q. And state how long it has been there, to your knowledge.

A. I found that volume when I came, in 1868; it was there.

Q. Please turn to the Pease map. I will ask you to state whether what purports to be the Seth Pease map of 1796, found on page 1 of this book, was there in 1868 when you went into the engineer's office?

A. Yes, sir.

Q. And I will ask you whether the subsequent pages, pertaining to that map, were there at that time?

A. Page 2 was there; page 3—

Mr. DYE: Better indicate what you want, Mr. Lawrence.

Q. Just the pages that relate to that first map, I am asking about.

A. They were all there, yes, sir.

Q. And how many pages are there that pertain to that map?

A. Eight pages.

Mr. DYE: The first eight pages?

The WITNESS: No, it is more, as it is numbered here; it is thirteen pages.

Mr. CLARKE: The first thirteen pages?

The WITNESS: Yes.

Q. Now will you tell, for our information—by whom was that copy of the Pease map made?

A. By I. N. Pillsbury, city civil engineer.

Judge SANDERS: What is the date of that map?

The WITNESS: The date of that map is January 5th, 1855.

Q. Is the Spafford map in that book?

A. The Spafford map is in here.

Q. Please turn to the Spafford map?

283 A. The Spafford map is on page 22—the map and the description of the street is on page 21.

Q. I show you now another book, and I will ask you to state what book it is? (Handing witness book.)

A. It is Volume of Allotments, No. 2, City of Cleveland.

Q. Where did you get that book?

A. That is kept in our office—it is a record.

Q. How long has that book been there, to your knowledge?

A. That book was there when I came, in 1868.

Q. Has it been there ever since?

A. Yes.

Q. I will ask you to turn to page 1, and state whether that map was there at that time, in the book—I mean in 1868?

A. The first map that is here is at page 10; the preceding pages are index.

Q. Is the Spafford map recorded in that book?

A. No; that is the Pease map.

Q. I will ask you to state to the court and jury what experience you have had during the last thirty years, in making maps of streets and lots, in the city of Cleveland—state in a general way.

A. I say I have had great experience; I had to make all the maps relating to streets and surveys that were made.

Q. Do I understand you to say that you have had charge of that entire branch of the business in the engineer's office?

A. To a certain extent, I have had charge of that entire branch.

Q. For the last fifteen years you have had the entire charge of it?

A. Yes, sir.

Q. And before that time were you engaged in that branch of the business?

A. Yes, sir.

Q. I will ask you if you are able to state, from your experience, what map is used in this city, by surveyors, in tracing the lines of lots and streets, found in the original plat, or the original town of Cleveland?

A. I think that the Seth Pease map and the Spafford map; they don't differ; they are both used.

Q. When you say they are both used, do you mean that they are used by surveyors and people generally, in determining the streets?

A. By the surveyors in determining the streets and two acre lots; as far as the survey of the city goes.

Q. I wish you would take this map, which I will have marked "Exhibit No. 6," and state who made that map?

A. I made that map.

Q. Now, from what data did you make it?

A. From a survey made by Mr. Sturtevant, assistant engineer.

284 Q. Is he present this morning?

A. Yes, sir.

Q. Now you may explain how this map was made.

The COURT: When was this map made?

The WITNESS: From a survey made last November and December, by one of our engineers.

Q. Now go on and explain that map.

A. That is the Cuyahoga river, and the government pier (indicating).

Q. When you say "that is the Cuyahoga river," state how it is marked.

A. It is shaded; it is the west government pier; that (indicating) shaded the same, is the new stone pier.

Mr. CLARKE: Is that upon the right?

The WITNESS: On the east; right here (indicating) is the light house.

Mr. CLARKE: That is the white square at the extreme end of the stone pier?

The WITNESS: Yes, that space here (indicating) colored yellow, near the river, is the Pennsylvania railroad freight house.

Q. And marked how?

A. "Pennsylvania railroad freight house." Here (indicating) that little building, is the United States Custom House, the name is there: The building colored red, here (indicating) is named the "Pennsylvania Railroad freight house." The next south of that, colored yellow, is the Pennsylvania Railroad freight house. The space that runs around those buildings, colored greenish yellow, are platforms, built along those freight houses. The buildings here (indicating) along Front street, is the freight depot of the Big Four and the Lake Shore, and the strip along here, marked yellow, is the platform in front of it.

Q. They are marked, aren't they?

A. Yes, sir. That building here, marked "L. S. & M. S. Railroad Company freight," is colored yellow. Here that part of a circle, is a round house of the Big Four, C., C., C. & St. L. Railway Company. That round house space there, colored dark blue, and marked, is a turn-table. That is a tank, north of that round house (indicating). It is marked a darkish color. Those buildings (indicating) are coal sheds, and the line running north from that coal shed, and up to that track (indicating) and around here (indicating) is a fence; and there are little buildings in here—offices, or sheds or shanties, whatever they are; they are colored yellow
285 and red. That line here (indicating) is marked "Established harbor line."

Q. What is that?

A. That is the harbor line as established by the United States Government. That line here (indicating) dotted — indicates a pile bulkhead, from the east side of the Pennsylvania Railroad Company freight house, about eight hundred feet.

Mr. DYE: Eight hundred feet from what?

The WITNESS: Eight hundred feet runs from west to east.

Mr. CLARKE: Is that the extreme northerly construction that is there now?

The WITNESS: That is the extreme northerly construction, between the Pennsylvania Railroad freight and that pier (indicating).

Mr. CLARKE: About eight hundred feet east of it?

The WITNESS: And it runs, the piles, about eight hundred feet. This here, indicated by blue shades and lines, running through, indicates water, and is what is known as the Cuddy Mullen slip, so called, and it is so marked there. And that pier next to the Cuddy Mullen slip, next east of it, there are two buildings marked "Northern Steamship Company freight," and "Northern Steamship Company freight house." Then comes another slip, which is marked a blue shade around here, with lines running, that brings us pretty close to the west line of Water street; Water street runs to the shore line.

Mr. CLARKE: Do the boundaries of Water street appear on that?

The WITNESS: Yes; Water street, ninety-nine feet (indicating); this part here (indicating) colored dark gray—

Q. How marked?

A. Is the bridge; and that yellow strip that runs on the east side of it is marked "walk"—sidewalk. That building marked "Union

Passenger Depot," is colored dark gray. Those blue lines, blue strips, each one of them indicates a railroad track. Each blue strip represents two rails—it represents one track.

Q. What are these lines (indicating) extending from the union depot out west marked "fence?"

A. That is the line that runs out from the passenger depot, north side; that is marked "fence;" and there is another one between that track and that track here (indicating) which is marked "fence."

Q. What is this that is marked slate color, around opposite Spring street?

A. That is a turn-table.

Q. And what is this here (indicating) opposite Spring street?

A. I don't know what they are; they are buildings.

MR. CLARKE: They are marked by small squares, colored, are they?

MR. LAWRENCE: Yes.

Q. You may state whether, in making that map, you had the written notes and minutes of the survey made by Mr. Sturtevant?

A. Yes.

THE COURT: What is the total acreage of area of that ground from Front street, from the 132-foot line north, the line of occupation of the railroad companies, out to the extreme structures that they have there?

THE WITNESS: The superficial area?

THE COURT: Yes, the superficial area.

THE WITNESS: Of that space indicated by the north line of Front street, 132 feet, out to the established harbor line?

THE COURT: That is right.

THE WITNESS: And from the west line of Water street to a line about twenty-five feet east of the face of the pier, the east pier, contains fifty-one and thirty-seven hundredths acres.

Q. In your fifty one acres do you include this water that is in the Cuddy Mullen slip, so called?

A. I include the water in the Cuddy Mullen slip, and I include the water from the pile bulk head out to the harbor line. The water in the pile bulk head, from the pile bulk head out to the harbor line, is a little over four acres, and the Cuddy Mullen slip is two acres.

Q. Where did you get your data in marking the harbor line there?

A. I had the data from the maps that are furnished us by the United States engineer.

Q. I will show you this map and ask you if that is the one—it has been marked "Exhibit No. 5."

A. That is the map that I used.

Q. Do you know when the harbor line was established by the secretary of war—the harbor line as it exists now?

287 A. The harbor line, approved by the secretary of war, that one there, was February 1st, 1895; there was another harbor line before that, which run, not the way it runs now; it run more towards the shore.

Q. What was the difference in front of Bath street?

A. It started at the same point on the Government pier, and did run—I cannot say what difference that would make without—

Q. Give it approximately, if you can?

A. On the west line of Water street it would bring it in about two hundred and fifty feet nearer to the shore than it is now.

Q. And was it a straight line from that point to the west starting point?

A. It starts at the same point, on the Government pier, and runs nearer to the shore, as it goes east.

Q. But was it a straight line?

A. It was a straight line.

Q. When was that harbor line established?

A. That harbor line was established in December, 1889.

Q. And I will ask you whether that line was entirely outside of the land that you have now marked as part of Bath street?

A. It was entirely outside of the land.

Q. What is the scale of this map that we have marked Exhibit "No. 6"?

A. The scale is sixty feet to the inch.

Q. I will ask you whether in making that map you made it according to the data that you had, to wit: the survey and notes of Mr. Sturtevant, and the harbor lines, as established by the secretary of war?

A. Yes, sir.

Cross-examination of OTTO DERGUM.

By J. H. CLARKE, Esq.:

Q. This blue line that runs across the Cuyahoga river is the main line of the Lake Shore and Michigan Southern Railroad, is it not?

A. It is the track.

Q. The line coming from the south, a little to the west of Spring street, and turning to the east, extending down to the Union Depot, is the main line of the Big Four?

A. I think so.

Q. You have been familiar with this situation for a long time. How is it as to this building marked "freight depot, C., C., C. & St. L. R. R. Co. and L. S. & M. S. R. R. Co."—was that there in 1868?

A. I don't know that.

Q. What is your earliest knowledge of it?

A. I couldn't say whether these buildings were there in 1868—I couldn't say for certain.

288 Q. You couldn't say for certain?

A. Whether they were there in 1868—I came here in 1867.

Q. Were they there in 1867?

A. I couldn't say.

Q. What is your first knowledge of that freight station being there? I mean how long do you remember it being there?

A. From the beginning of the seventies, I guess, I should say.

Q. About 1870, any way; it was an old building then, wasn't it?

A. How old it was I cannot say.

Q. Well, it looked old; it may have been new, but it had all the appearance of age?

A. I never looked at the building in that light; I might have passed by and saw the building.

Q. Now about this building marked "L. S. & M. S. R. R. Co. freight house," sometimes called the pier freight house—what is your earliest recollection of that?

A. I have been very seldom to that.

Q. You are not sufficiently familiar with the location to say?

A. In a general way, I am. I put that on from the notes that were given me, and I used—

Q. Certainly, we understand that, but what I want to get at is whether you have personal information with respect to it?

A. Not very much; not about those buildings.

Q. Now these lines that you have marked blue, you say each represents a railroad track, and I suppose they are in use by the companies?

A. I guess so.

Q. Constant and frequent use?

A. How much are they used, I—they are used, very likely, or they wouldn't be there.

Q. They have every appearance of very considerable use, don't they?

A. Yes.

Q. You know as a matter of fact, that they are in constant use?

A. They are in use.

Q. What is the width of this building marked "freight depot, C., C., C. & St. L. R. R. Co. and L. S. & M. S. R. R. Co.?"

A. Which one? The whole?

Q. Yes, the whole; it is a uniform width, isn't it?

A. Including the platform?

Q. Make it both ways, with and without the platform.

A. It is 82 feet, without. The platform in the rear is 13 feet, and it comes in here (indicating). That building marked "freight C., C., C. & St. L." is only 80 feet wide; the platform runs in here (indicating) about 16 feet wide.

Q. You mean the west end that is marked—

A. It is a little narrower than the east end.

289 Q. And that appears in the diagram, on the map?

A. Yes, it appears here (indicating).

Q. What is the width of this southerly building marked red, and "Pennsylvania R. R. Co. freight H.?"

A. Without the platform?

Q. Yes.

A. 64 feet; the platform in the rear is about 9 feet and a half, and in front about 11 feet.

Q. What is the length of this Pennsylvania railroad freight station?

A. 210 feet.

Q. Now, to get back; I will ask you the length of the freight depot of the Big Four and Lake Shore, the width of which you just gave?

A. The Big Four?

Q. The whole width of it?

A. About 820 feet.

Q. What is the length of the yellow portion, the rear end of the freight station, which is yellow, and marked "C., C., C. & St. L. R. R. Co."?

A. 344 feet.

Q. What is the width of the building marked "Pennsylvania R. R. Co. freight house," next north of the one you gave us the length of a moment ago?

A. It is 143 feet and seven-tenths feet wide.

Q. What is its length?

A. 240 feet.

Q. Looking now to the building represented by the yellow squares, in the extreme north of the northwest part of the property, and of the map, and marked "Pennsylvania Railway Company freight house," give us the length of that from north to south?

A. From north to south it is 408 feet.

Q. Now the width of the widest part?

A. The width of the widest part is 80 feet and a half.

Q. And the narrower part?

A. 40 feet and two-tenths, not including the platform.

Q. What is the width of the platform?

A. The platform is 8 feet and a half.

Q. How far is the westerly line of that building from the river?

A. About 35 feet.

Q. Looking now to the building shaded yellow, and near the middle of the plat, and marked "L. S. & M. S. R. R. Co. freight house," give us the length of that, from north to south.

A. The length from north to south is 397 and six-tenths feet.

Q. And the width?

A. The width is 89 feet, exclusive of the platform; the platform is 12 feet wide.

Q. And the platform is indicated by a narrow strip between the track lines on the east side, and extending to the south?

A. Yes.

Q. Can you give the dimensions of the building marked
290 "C., C., C. & St. L. R. R. round house," colored red?

A. The width is 74 feet and a half.

Q. What is the extreme length?

A. The extreme length around the curve?

Q. Yes.

A. 261 feet, on the northern side.

Q. What is the extreme length of the westerly of the two buildings indicated in yellow, and marked "Northern Steam Ship Co. freight house?"

A. The one that stands farthest west, the width of it is 49 feet; the length is 256 feet and a half.

Q. Now give us the dimensions of the other freight house, marked "Northern Steamship Co. freight house?"

A. The width is 48 feet and the length of it is 400 feet.

Q. You have said, I believe, that the distance from the Pennsylvania pier, near the river, to the first construction to the east and north of the pile bulk head was 800 feet.

A. I mean from that point here, over to there (indicating).

Q. Didn't I properly describe it as the easterly side of the Pennsylvania pier?

A. Yes, about 800 feet.

Q. And now what is the distance from this line marked "pile bulkhead" north to the line marked "established harbor line?"

A. In the center it is about 210 feet; you see it is narrower here (indicating).

Q. And what is it at the west end?

A. It is 195 feet.

Q. What is it at the east end?

A. 225 feet.

Q. What is this building indicated by a small square colored yellow, near the river, and marked "U. S. Custom House?"

A. That is the United States Custom House, river office.

And further to maintain the issues on its part, plaintiff offered in evidence map found on page 1 of volume 1 of Profile of Maps, referred to in the testimony of Mr. Dercum, the same being marked Seth Pease Map 1796. Said map is hereto attached and made part hereof and marked Plaintiff's Exhibit Seth Pease Map of 1796.

And further to maintain the issues on its part, the plaintiff offered in evidence the minutes of the survey accompanying the said map, to and including page 11, a true copy of said minutes being as follows, to-wit:

The Minutes of the Survey of the Several Streets and Lanes in the City of Cleveland.

291 First is Superior street. North Side beginning at the west end, where it connects with Water street at a post (from said post a white oak marked *b* bears S. 31° E. dist. 21 links) thence run N. 36° E. (counting from the true meridian). 20 chains to the square, then keeping the same course across the square to a corner post on the other side of the square 9.50 links (from the last post a white oak marked *F*, bears N. 25° W. 24 links dist.); thence N. 56° E. 20.00 to the west side of Erie street to a corner post, from which W. oak marked *r* bears S. 82° W. dist. 46 links.

N. B.—This street is 200 links in width.

Survey of Lake street. North Side—Beginning at the west end of Water street at a corner post (from which a whitewood tree marked *h* bears S. 21° E. distant 31 links); thence run N. 56° E. 2.400 links to the west side of Ontario street to a corner post (from which a black oak marked *J* bears N. 42° E. dist. 38 links); thence across said street 150 to a post from which a white oak marked *K*

bears N. 22° W. dist. 24; thence to the west side of Erie street 24.00 to a corner post from which a white oak marked N. bears N. 69° W. 45 links distant.

This street is 150 links width.

Federal street is parallel to Superior street. The south side of Federal street is half way from Superior street to Lake street; it begins at Erie street and runs N. 56° E. to the east line of the city limits.

The length is 1,800 links, and its width is 150 links.

A description of Huron street. It is parallel to Superior street and distant from it 20 chains. Its width is 150 links; its length from the east line of the city to Erie street is 18 chains. The north side of Huron street from Erie street to Ontario street was at first 24 chains, afterwards there was a triangular piece taken off from lot No. 97 to connect L street with Ontario above the bank. The north side of Huron street from Ontario to the river is 745 links. The south side of Huron street from Erie to Miami street is 16 chains, and from Miami street to the river 12.50 links.

Ohio street is parallel to Huron street and is distant from it 20 chains. Its whole length is from Miami street to Erie street 16.00 links. Its width is 150 links, or 6 rods.

The description of Erie street. East Side.—The distance from the south line of the city limits to Huron street is 31.50 and from Huron street to Federal street is 32.00, and from Federal street to the top of the banks of the Lake Shore is 17.25 links.

West Side. The distance from the south line of the city limits to Ohio street is 10.00 from Ohio street to Huron street is 20.00, from Huron street to Superior street is 20.00, from Superior street to Lake street is 20.03, from Lake street to the top of the banks of the Lake Shore is 708; below the banks not measured.

This street lyeth at right angles with Superior street, that is N. 34° W. or S. 34° E. Its whole length from the south line of the city to the top of the bank of the lake is 83.68. The width of this street is 1.50 links.

Ontario street. East Side, from Huron street to the Square, is 14.00, from the Square to Lake street is 16.00, from Lake street to the top of the bank of the Lake Shore is 700.

West Side, from Huron street to Maiden lane, is 8.55, from Maiden lane to the Square is 6.70, from the Square to Lake street is 16.00, from Lake street to the top of the bank of the Lake Shore is 7.62. The course of this street is N. 34° W. or S. 34° E. and 1.50 in width.

Miami street connects the west end of Ohio street with Huron street, and is parallel to Erie street. The length is 20.00, and its width is 1.50.

Water street. East Side, from Superior street to Lake street, is 20.00, from Lake street to the top of the bank of the Lake Shore is 8.50.

West Side, from Superior street to Mandrake lane, is 15.00, from

Mandrake lane to Bath street is 13.12. Its width is 1.50. Its course is N. 34° W. or S. 34° E.

Survey of Mandrake Lane. West Side—Beginning at Water street and run by lot No. 197 S. 56° W. 572, thence S. 6° E. 5.61 to Union street.

South East Side—Beginning at Water street and run S. 56° W. 518, thence S. 6° E. 484 to Union lane. The width of this street is 1.00.

Survey of Union Lane—North Side, beginning at the south end of Water street, West Side, and run N. $80^{\circ}40'$ W. 3.16 to a post; thence N. $56^{\circ}50'$ W. 853 links to a post; thence S. $77^{\circ}20'$ W. 200 to a post, where it connects with Mandrake lane, thence S. $77^{\circ}20'$ W. across the end of Mandrake lane 101 links; thence S. 56° W. 167 links to the river. The width of this lane is 1.00 links.

Survey of Vineyard Lane, West Side—Beginning at an angle formed by the continuation of Water street, west side, and Superior side.

South Side, thence running S. $8^{\circ}20'$ W. 435 to a white oak; thence S. 24° W. 1200 to a post; thence S. 66° E. 128 to the river.

N. B.—This road is laid 1.00 wide; also a reserve is made 293 for a landing place at the river 6 rods immediately east of the last described line, likewise the last mentioned post is distant N. $14^{\circ}30'$ W. 150 links from a stake set at the end of the 17th course Cuyahoga traverse.

Survey of Maiden Lane, North Side—Beginning at a large black oak marked HHI on the east side of Vineyard lane, and run No. 64° S. 11.90; thence N. 77° E. 1057; thence N. 56° E. 826 to the west side of Ontario street. This road is 75 links wide.

The preceding map, facing page 1st, together with minutes and descriptions on pages one, three, five, seven, nine and eleven (1, 3, 5, 7, 9 and 11) of this book, are accurate transcripts from a copy of the original map and minutes of the survey of the City of Cleveland in 1796 by Seth Pease, surveyor. Said copy of the said original map and minutes from which the said map and minutes on the aforesaid pages were copied, was made by the undersigned, I. N. Pillsbury, in the year eighteen hundred and forty-two (1842) from the said original map and minutes made by said Seth Pease; which copy was afterward compared with the said original map and minutes of Seth Pease, by Leonard Case, Esquire, of Cleveland City, and Ralph Granger, Esquire, of Fairport, Geauga county, Ohio; and their certificates thereunto added, by themselves, copies of which are hereunto attached.

I. N. PILLSBURY,
Civil Engineer, Cleveland, Ohio.

CLEVELAND, Feb. 6, 1843.

I, Leonard Case, of Cleveland, certify that I have resided in Cleveland steadily since August 6, 1816. That I have this day carefully examined and compared with the originals what is written in this book on pages No. 291, 292, 293, 294, 295, 296, 297, 305, 307, 308, 309, 310, 311, 312, 313 and 314, including the city plan facing

pages 290, and have marked at the bottom of the line on each page L. C. I have compared the writing, map, marks, numbers and figures with the original, and believe the same to be as near a facsimile copy of the original as can usually be made by ordinary writers. The original is a map, tables and field minutes purporting to be a survey of the City of Cleveland made by Seth Pease in the year 1796. I have been familiarly acquainted with the original, of which the following is a copy, ever since the year 1816, and during all that time the original has been reputed to contain an authentic survey and plan of the City of Cleveland as it was first surveyed in the year 1796 for the directors of the Connecticut Land Company and the original been recognized by the older citizens of Cleveland as containing an authentic survey of said city as surveyed in 1796; and among those persons who have recognized said survey to be authentic was the Honorable Calvin Pease, brother of Seth Pease, the surveyor.

LEONARD CASE.

By request, I, Ralph Granger, of Fairport, Lake county, in the State of Ohio, do certify that I have carefully examined and compared the following numbered pages of this book first opposite 290, pages 291, 292, 293, 294, 295, 296, 297, 305, 307, 308, 309, 310, 311, 312, 313 and 314 with the original minutes of the City of Cleveland, made by Seth Pease in 1796; it is a small manuscript, entitled "Field Notes Made on the Connecticut Western Reserve by Seth Pease." I have no doubt but that those words in the manuscript were written by the same Seth Pease who surveyed the reserve. I am also confident that the map bearing on the figure of a bell the words, "A plan of the City of Cleveland," with the heading of the page succeeding said map, reading as follows: "The survey of the City of Cleveland began September the 16th, 1796, situated on the east side of the Cuyahoga river at its mouth, containing 220 lots," are in the handwriting of the same Seth Pease; and that the words "These lots front on Water street" with the map opposite, and every other part of the manuscript succeeding are also from the pen of the said Seth Pease. Having made the comparison carefully, I am satisfied that the pages above named are faithful transcripts. I have written my name thereon.

Mr. Pease was my uncle. I was for years most intimate with him, and almost a member of his family for a long time. I have seen him write times innumerable. I am not old enough to know that he surveyed the Connecticut Western Reserve, but that fact has become a matter of history, not of evidence. In recognizing the passages above quoted I feel quite positive that they are in his handwriting, and I mention no other passages, supposing the book thus signed by him, the surveyor of the county, to be entirely his by official adoption, if not written entirely by his hand. I verily believe that this book, with its map, was once used by me as an attorney, in evidence in an ejectment suit in Cuyahoga county, and their authenticity and genuineness were proven by other witnesses than myself.

RALPH GRANGER.

THE STATE OF OHIO,

Cuyahoga County, ss:

Cleveland, February 21st, 1843. Personally appeared before me this 21st day of February, A. D. 1843, Ralph Granger, of
295 Fairport, Lake county, Ohio, to me personally known, and having been by me duly sworn, made solemn oath that the statement subscribed by him on the foregoing page is true.

In testimony whereof I have hereunto affixed my official seal and signature, this 21st day of February, A. D. 1843, at Cleveland, in the county and state aforesaid.

SAMUEL STARKWEATHER, [SEAL.]

Notary Public at Cleveland, Ohio.

And further to maintain the issues on its part, the plaintiff offered in evidence the Spafford map, found in volume 1 of Profile of Maps, with the understanding that it purports simply to be a copy of the map plaintiff has already put in evidence from the recorder's office of Cuyahoga county. Said map is offered solely for the purpose of showing that this map has been used as a map in the city civil engineer's office of the City of Cleveland.

It is stipulated between the parties that the map just offered is a copy of and identical with the map heretofore offered in evidence, on page 246 of this record.

And further to maintain the issues on its part, the plaintiff offered and read in evidence the testimony of JAMES W. STURTEVANT, who testified as follows:

By Mr. LAWRENCE:

Q. State your name?

A. James W. Sturtevant.

Q. What is your business?

A. Civil engineer.

Q. Where are you employed?

A. In the chief engineer's office of the City of Cleveland.

Q. How long have you been in that office?

A. Since 1890.

Q. What is your position there?

A. Chief transit man.

Q. You may state if you have charge of making surveys for the City of Cleveland in the engineer's office?

A. I have charge of parties when they go out to make surveys, yes, sir.

Q. I will ask you if you made a survey of the land known as all that part of Bath street lying north of the line of 132 feet from the north line of original lot 191?

A. Yes, sir, I made a survey.

Q. When did you make that survey?

A. Along about the first week in November I started.

Q. Last November?

A. The first week of November I started; I don't remember just what day.

Q. November of 1898, you mean?

A. Yes, sir.

Q. You may state whether or not you furnished your notes and minutes of your survey to Mr. Dercum, chief draughtsman in the engineer's office?

A. I did.

Q. Have you compared the map made by him, and to which he has testified this morning with your notes?

A. Yes, sir.

Q. Are you able to state whether that map is made in accordance with your survey and notes (indicating map marked Exhibit 6)?

A. Yes, sir.

Q. Is it or is it not in accordance with them?

A. It is in accordance with my notes as far as I can see.

(No cross examination.)

And further to maintain the issues on its part, the plaintiff read in evidence the testimony of GEORGE W. PECK, as follows:

By Mr. LAWRENCE:

Q. What is your name?

A. George W. Peck.

Q. Where do you live?

A. I live 33 23rd avenue, city.

Q. How long have you lived in the City of Cleveland?

A. 74 years and a little over six months.

Q. What is your age?

A. 75 years the coming 16th of July.

By the COURT:

Q. You were born here 74 years ago?

A. Yes, sir.

Q. Lived here all your life then?

A. Lived here all my lifetime.

Q. Where did you live in your childhood?

A. My first recollection was at the top of Union, on the hill at the top of Union Lane right opposite the end of the present Bethel building.

Q. How long did you live there?

A. Well, I don't remember how long I did live there, but a number of years.

Q. How far is that from Bath street?

A. Well, it is perhaps in the neighborhood of a short half mile.

Q. Now, you may state how long you lived in that vicinity?

A. My earliest recollection about the beach of the lake there was commencing about 1838, the spring of 1838. I have a recollection of being about more or less in boyhood. But in the spring of 1838 I was fishing on the beach there and became somewhat familiar with the ground.

Q. You may state whether you had knowledge of what is known as Bath street from 1838 down to 1850?

A. To 1847 more correctly, because after 1847 I was not about that locality so much as I was up to 1847, we will say. I was familiar with the ground fishing more or less every spring from 1838, spring and fall from 1838 to 1847.

Q. Now, you may state to the jury what was the condition of the land known as Bath street during that period from 1838 to 1847?

A. The water reached up to about the north side of Bath street what is now I suppose called Front street, as I understand it, or Bath street, and there was a beach more or less sand nearer the water, and it was a little further from the water; the land was a little more solid, little more dirt mixed in with it perhaps.

Q. How was it out at East Government pier?

A. Well, there was a beach from the point of the hill from the bluff of the hill, there was a beach from the point of the hill near the lighthouse on the hill, there was a common beach at that time or an open space running to the pier.

Q. Go on and tell generally what was the condition of that ground, as to whether it was an open space or not?

A. It was an open space. People used to drive on there to haul away sand, and there was a good deal of drift wood that used to wash on to the beach of the lake. People would go there and chop that wood up and split it up and haul it away, people who lived about the lower part of the city there. And people sometimes, when we were fishing there, would come in with their teams and drive on to the beach to haul fish away, come on with their wagons, farmers would come and want to buy some fish from the fish men. There was free access there to the beach.

Q. In those days how did people go down to the government pier from Water street?

A. Well, they used to go down St. Clair street hill mostly. That was about the nearest point. There was rather a steep place down at what was called at that time Lighthouse hill, but there wasn't much teaming down there. They went down more from St. Clair street or Superior street, drive down what was called East River street and get down that way.

Q. Do you know where Stockley's pier was located along about 1845 probably?

A. Yes sir.

Q. Do you know when that pier was constructed?

A. I can't name just the year.

Q. Give us about the time?

A. Well, it was along 1852 or 1853, along there somewhere, I should say, according to my best recollection about it.

Q. Have you any knowledge of Stockley's pier at an earlier date than that?

A. Well, not much knowledge of it. I don't remember just when that was. It might have been earlier than that, but I don't remember distinctly about that.

298 Q. Are you able to state how people got down to Stockley's pier?

A. Well, they used to go down Water street some, but more especially River street.

Q. Where was the pier located?

A. Well, it was located in the vicinity of the east end there of the Union depot, according to my recollection.

Q. The east end of the depot or the west end?

A. Well, it was about nearly opposite of Water street according to my recollection of it.

Q. Point out on the map as near as you can where it was located. This represents Bath street and this is Water street (indicating).

A. Running down to Water street there used to be a bluff right in here (indicating), and people going down by foot would come right down here. There is a point at the hill that comes something like that, and there was a blue clay bluff right along in here somewhere according to my recollection (indicating about the end of Water street).

Q. How did people drive down to Stockley's pier from Water street?

A. Well, my recollection would be they would drive down—River street don't seem to be here—they drove down River street and drove to what would be Bath street.

Q. How did they get to Stockley's pier from that point?

A. By going along there, that driveway, Bath street; that was the only way of getting to it that I remember of.

Cross-examination of GEORGE PECK.

By Mr. CLARKE:

Q. This River street was down close to the river?

A. Yes, sir, just east of the river, run along there.

Q. The first street that run down from Water to River street south of the lake in those days was called Lighthouse street?

A. Yes, sir, the first street south from the lake was called Lighthouse, I believe is what we used to call it.

Q. Further down came St. Clair street?

A. No, sir, St. Clair street would be further south.

Q. That is what I mean, further south of St. Clair?

A. Yes, sir.

Q. People who wanted to go to the government pier or up there to get fish, would go down either St. Clair hill or Lighthouse street?

A. Yes, or Superior street, or even from the west side come along on River street further west, or up across over the floating bridge; over by the Cuyahoga furnace there was a floating bridge there.

Q. How was it in those years say from 1837 to 1847, how was it as to the lake eating into the bank down along there, and
299 the bank caving?

A. The bank of the lake nearly always, as I remember it, from the point of the hill laid in shelves, landslides perhaps you might call it. There would be a layer down by the lake, and up

above would be another shelf, and another, until you got on top of the hill. That is the way the land lay there all along until you got to the top of the hill.

Q. There were layers of clay and the sand would slide off into the lake, eaten up by the waves?

A. I didn't see the clay so much in any place that I remember, except right at the point of the hill. It seemed to be gravel; along when you got from that point, the bluff, down near Spring street, perhaps it would be called.

Q. The sand would keep sliding off into the lake?

A. What you might say caved down, and there would be perhaps well, from four to six, eight and ten feet laid in layers, rather irregular, and yet there seemed to be just about so much space above the other (indicating about half a foot), where you get on to this layer, and climb up until you get on to the next, and on up until you get to the top of the hill.

Q. That kept going on through those years?

A. Yes, during my recollection, until they commenced to grade and in early days they commenced building their shanties along about the Union depot, and they didn't give it a chance to cave so much.

Q. After they got the piles in there for the railroad tracks it didn't cave so much?

A. I don't know about the piles. I don't know as I paid much attention to that.

Q. They would shut out the water, wouldn't they?

A. I didn't pay so much attention to that, I don't know. I know in earlier days it laid in shelves, one shelf-like above the other until you got to the top of the hill.

Q. That land where you used to fish, called Bath street, was just an open sand beach in those days, the water coming down to about what is now the north side of Front street?

A. Yes, the water came up about to the north side of Front street, and the water when there was a pretty heavy sea, and the wind blowing pretty fresh it would roll over the beach and go further south so at times there would be perhaps two feet of water in the low ground.

Q. After you got over this ridge of sand that the waves threw up, then the land sloped away the other way, and there was a swamp in there next to the river, was there not?

A. There was a low place, and sometimes the water would stand in there until it would dry away.

Q. You couldn't drive down to that beach to Water street in those days, could you?

A. No, I could not.

300 Q. The bank had caved away?

A. No, you couldn't drive down from Water street.

Q. If you wanted to get down there for fish or drift-wood, or to get over to the government pier, you had to go this other way and you had to come back that way?

A. Yes, drive down on to the pier from River street; that is where

you got on to the beach was from River street, yes, I think that is according to my recollection.

Q. In time of storms the water swept clear over that, did it not?

A. Yes, when the wind was blowing fresh and a heavy sea it would wash over it.

Q. Right over that part called Front street now?

A. Yes, sir.

And further to maintain the issues on its part, the plaintiff offered and read in evidence testimony of RICHARD DUNN, as follows:

By Mr. LAWRENCE:

Q. What is your name?

A. Richard Dunn.

Q. How old are you?

A. Seventy years past.

Q. Where do you live?

A. I live at 226 Hoadley street.

Q. How long have you been in the City of Cleveland?

A. 62 years and past.

Q. Where did you come when you first came here?

A. On the West Side, what was called Ohio City.

Q. What part of it?

A. Lived on what they called Carroll Court.

Q. How long did you live over there?

A. Four years.

Q. Then where did you move?

A. To the East Side.

Q. Where did you live on the East Side?

A. The first place we lived on St. Clair street east of Erie.

Q. How long did you live out there?

A. Well, my father lived there a good many years, different places.

Q. You may state during what period of your life you have been familiar with Bath street, if you have been familiar?

A. Well, from 1836 up to 1850, more or less.

Q. State to the jury how you knew Bath street during those years?

A. Well, I used to go down there when I was a boy to see them fish; they used to fish with seines.

Q. What part of Bath street did you fish?

A. Well, used to fish from the pier, from the docks, and upwards to the bluff that was to the foot of Spring street.

301 Q. Do you know what was called the west fishing ground?

A. The west fishing ground?

Q. Yes.

A. I suppose that was on the west side of the river.

Q. Do you know any such term as applied to the fishing on Bath street?

A. Yes, sir, Bath street from the pier. Bath street run parallel with the lake.

Q. How frequently during the years you have named were you down there upon Bath street and upon that vicinity?

A. Well, from '38 up to '44 I used to go down there a good deal.

Q. What doing?

A. I used to go down of a Saturday and Sundays to see them fish.

Q. State what was the condition of Bath street during those years that you were acquainted with it?

A. Bath street—there used to be a driveway from Water street down to River street, a driveway, room enough for two teams to pass; that was the main thoroughfare.

Q. Was that on Bath street?

A. That is Bath street from Water street down.

Q. Yes, sir?

A. Yes, sir. It was low land up as far as Spring street, where Spring street is today.

Q. Have you seen persons driving teams along there?

A. There was free access all through there. Of course they used to cross this driveway and go in all directions. It was low land and a heavy sea from the north would wash the logs up over into the cesspool.

Q. What were those teams going down that way for, do you know?

A. They used to go down there to haul sand, buy fish, and they used to cut up the logs and haul them away.

Q. Do you know where Stockley's pier was located?

A. I do sir.

Q. Do you know when that was built?

A. I think it was along in 1848, 1847 or 1848.

Q. Where was that located?

A. Pretty near to the foot of Water street.

Q. Do you know how people got down to Stockley's pier from Water street?

A. Yes, sir.

Q. How did they go?

A. They came part way down the hill.

Q. On Bath street?

A. Yes, sir, and then there was a driveway cut on the side hill and went down to the foot of Water street and then over on to the pier.

Q. Describe the street?

A. It was all open, all open from the south side of Bath street, the south side today, right to the water's edge.

302 Cross-examination of RICHARD DUNN.

By Mr. CLARKE:

Q. Mr. Dunn, you recollect that situation between the years 1836 and 1850?

A. Yes, sir, between 1836 and 1850.

Q. And in those days the street next to the river was called River street?

A. Yes, sir.

Q. And that ran down along the river bank up to this Bath street or the lake shore?

A. It used to run right down to the beach.

Q. To the beach?

A. Yes, sir.

Q. The way you got down from Water street to that was by Lighthouse street?

A. Well, there was a roadway, but it didn't amount to much.

Q. Then you went down St. Clair street hill, drove down there?

A. Down Lighthouse hill to Front street, and went through, that is teams that had any loads.

Q. Down River and up River to Front?

A. You could go through Front street, but it was pretty rough.

Q. Now, remember, we are back there before the railroads went in, you know?

A. Yes, sir.

Q. We are trying to recall the situation as it was then. That was just a sand beach there?

A. Yes, sir, all sand beach, from the south side of Bath street, right to the water's edge.

Q. And the water came, in those days, down about as far south as the old freight station?

A. The beach, the low land?

Q. Yes.

A. It used to extend up as far as the bluff.

Q. That is, you mean to the east?

A. Yes, sir, to the east, that is, to the high hill.

Q. And sometimes it would wash clear over Front street, in the high winds?

A. Yes, sir, it used to come over.

Q. I understood you to say that it used to carry the driftwood and logs up onto it?

A. Yes, I know; the fishermen had to get them out of the way, and it used to blow the logs, when the wind was coming from the north and east, and carry them up and land them in the holes.

Q. Right up as far as Front street?

A. I guess it was.

Q. And there was a swamp a little further south than the government pier, so that it was a tongue of sand, a sort of sand pit there?

A. Well, there was hills and hollows there.

Q. And when it would rain and there would be a heavy wind from the east, the water would wash up and fill those holes?

A. Yes, and throw the logs up on the beach. I know the fishermen had to get the logs out of the way to haul their seines sometimes.

303 Q. And if there wasn't a wind there was a street there, and if there was a wind there wasn't a street?

A. Well, you might call it a street; there was a driveway.

Q. Just like a beach?

A. They could go as they liked; it was a free access there.

Q. Just like an open common beach?

A. From the south side of Bath street, I suppose you call it Front street, right to the water's edge, it was all open there.

Q. Just like the balance of the beach there, further east, clear to the bluff, it was about the same?

A. Yes, between the pier end, and the bluff, it was pretty much the same; well, the bluff extended further west at that time.

Q. And it kept caving down as the years went by?

A. That was before they cut Front street—not Front street, but Spring street through.

Q. And you could not go straight down from Water street down to the beach there?

A. You could get down, but it was pretty hard work to get down.

Q. That is, a man could get down, or a goat could get down?

A. Well, I helped a man in 1844 get an empty wagon down there through the mud on the hill, coming down.

Q. It wasn't a passable road down there?

A. Not at that time, no.

Q. And when you wanted to get down to Stockley's pier you ran out towards the west and then zigzagged back to get out?

A. Yes, sir, formed a "V."

Q. Now, let us know about this beach, there. Was Spring street the next street west of Water street, at that time, between Water street and the river, wasn't it?

A. Spring street, I suppose—that is the second street from the river.

Q. It was between Water street and the river?

A. Yes, sir.

Q. That was down about the bottom of the bluff?

A. Yes, sir; they graded it through there; that was graded through in 1850 something.

Q. Am I right in saying that when the storms were from the east the water drove up all over that beach where you say people occasionally drove to get fish, or get lumber?

A. The water used to get up pretty high, up as far as—I guess the beach probably at that time, was about—well, I know the water used to go up under the shanties that was put up on the street there.

Q. Right up under the shanties that were on the street?

A. Yes.

Q. So that it washed over all that sand there?

A. Yes, sir.

304 By Judge SANDERS:

Q. How early do you remember of buildings being down on this so-called Bath street?

A. Well, there was no buildings there excepting these shanties there, what we call Irish town.

Q. I say, how early do you remember of there being buildings down there, for coal merchants and that class of business?

A. There was no coal yards down there at that time.

Q. What time do you mean?

A. Well, up to 1848.

Q. Do you remember when the city made an allotment down there and leased out the property to various people?

A. Where?

Q. On part of this property that you are talking about?

A. No, I don't know anything about the city—I know somebody filled up the holes there, but I don't know who they was—later on.

Q. How early was it that the city made an allotment down there, and made leases to various people for part of this property?

A. I don't know anything about that, sir.

Q. You never heard of that?

A. No, sir.

Q. Do you know what I mean by an allotment?

A. Laying out lots, I suppose.

Q. Yes, and then leasing lots to people for various business purposes—you have never heard of that?

A. No, sir, I don't know who they leased from, or whether they squatted there without having any lease, or not.

Q. Do you remember Mr. Dan Rhodes being in business down there?

A. I remember of Dan Rhodes having a coal yard on the west side of the river.

Q. Not this side of the river?

A. No, sir.

Q. Never heard of that?

A. I remember Dan Rhodes, but I——

Q. Do you remember Mr. Camp being down there?

A. Not on those bottoms near the lake; I never heard of him being there.

Q. You never heard of the city laying that off into lots, down there?

A. No, sir.

Q. And yet you say you were familiar with that property in 1845 and 1846?

A. Yes, sir.

305 And further to maintain the issues on its part, the plaintiff offered and read in evidence testimony of FARRELL GALLAGHER, as follows:

By Mr. LAWRENCE:

Q. What is your name?

A. Farrell Gallagher.

Q. What is your age?

A. I was born in 1843.

Q. How long have you lived in this city?

A. I have lived here since 1849.

Q. What has been your business up to within two or three years?

A. I was twenty-five years in the police department, almost.

Q. And what was your position in that department, the latter part of the time?

A. I was from 1876 until I retired, the 15th—from the 1st of June, 1876, until the 15th of June, 1896, a detective.

Q. While you were on the police force of the city where were you located as a rule?

A. I was located along the docks and on the west side—on both sides of the river, principally.

Q. And where has been your residence for many years?

A. From 1849, when we arrived here, we come on the beach to an aunt of ours, and cousins, come on Bath street, what is called Front street now; we were located just opposite the Bath street house, that stood at the corner of Meadow street and Bath street—across the street; we were opposite that, and with the lake to the rear of the house.

Q. Where have you lived since then?

A. After that we moved up to a building on Spring street; there were four buildings there, they called them the four sisters; they were four frame houses, two-story houses; we lived there until 1867, in August.

Q. And where have you lived since then?

A. After that we moved to 206 Spring street, south of that, at the foot of Mandrake street.

Q. Where do you live now?

A. I lived there until the 13th of October, 1880, and then come to 296 Washington street.

Q. Have you lived there ever since?

A. Yes, sir, ever since; I stayed temporary, once in a while, out to a sister's of mine, at 82 Salesbury avenue.

Q. You say when you first came to Cleveland you stopped with your relatives, who were living on Bath street?

A. Yes, sir.

Q. Where was that?

A. Just east of Meadow, right opposite Bath street house, on Front street, what they call Front, now; it was then Bath street.

306 JUDGE SANDERS: How old were you then?

The WITNESS: I was six years of age, then, or a little past.

Q. How far was this house from the lake?

A. Well, a heavy storm come up; I remember one storm come up one night, and, by George, the water come bang up to the kitchen; a big northeaster come and away she would come in.

Q. Were there other houses there at that time?

A. Yes, sir, there was a cluster of houses along there.

Q. On what part of Bath street were those houses located?

A. On the north.

Q. And east, or west?

A. There was some east of there, a few houses east of there, and they were west, clean to the government pier.

Q. You may state whether you have been familiar with Bath street from the time you arrived there in 1849, to the present time?

A. Yes, sir.

Q. Were there any railroad tracks upon the street when you came there?

A. No, sir, there was no railroad tracks; the first railroad track ever I remember, was down East River street.

Q. Are you able to state when the first tracks were laid upon Bath street?

A. The first tracks I can remember were in 1851, I think they graded there.

Q. What railroad company?

A. The Cleveland, Columbus & Cincinnati, they called it; now the Big Four.

Q. Where were those tracks laid?

A. They were laid down—they were grading, I think, in the latter part of 1851 they had got down, my recollection is, down to Front street; they had graded from St. Clair. There was quite a bank from St. Clair, and back of Mr. Ditmore's building they graded right down with their tracks, across what was then called Lighthouse hill, Lighthouse street; they call it Miami now; down to Bath street down there.

Q. Now, go on, if you can, and state your recollection of the order in which the tracks were put in there, and what companies put them in?

A. They always said the three C's.—Cleveland, Columbus and Cincinnati; and then finally the Toledo came along; some of the cars were marked Toledo, Norwalk & Cleveland Railroad, and then it was the Cleveland and Toledo—it came from Grafton, in; they come in over the Cleveland, Columbus and Cincinnati, and come in there; as they come in of course they made a few tracks along there; and then the first depot—the houses began to remove; they removed the houses clean down to the government pier to the river, they moved them west; moved the houses away; some people moved their houses up town, and other—were torn down; the people got out of there, and they built what is now the freight house—it is that freight house; they built that; the original depot still stands there; it stands on Front street, on the north side of it; they built that, and then made an addition to it.

Judge SANDERS: When was that built?

The WITNESS: That was built right after they come down, either 1851 or 1852; I wouldn't say positive to the year; and then the Cleveland & Painesville come along, and come along the edge of the hill from Seneca street; and they come along on piling until they come to the foot of Bank street, and then come on solid land, and reached the foot of Water street, just about where the west end of the Union depot stands today. They erected a little freight depot there; that was on the north side of the track—there came a single track—and then they put up a little house that answered as a passenger depot. They had a way of getting down the hill. They could have come clean up from River street, to it, or come down Meadow, but they had a little roadway that led down to Stockley's pier, and

you could come down half way; you would come down Water, and then go west, and then turn east.

Q. What kind of a roadway was that?

A. It was on Water, sir; it was a street that they had cut down—a portion of Bath street.

Q. You would go down on Bath street and then come back?

A. Yes, sir, you would come back east again, so that you could get down to Stockley's pier.

Q. It was all in Bath street, was it?

A. Yes, sir.

Q. Now, going back to 1849, when you first came there, was there any way for people to get down on to Bath street from Water street?

A. They would have to come down a steep hill, sir, until it was cut away, they got it graded away. Father worked on the grade one winter there; he worked for a man named McGullicuddy, and some cousins of mine worked there; they graded it down; worked on the hill there graded it down; a little before the railroad came, they were grading it down there.

Q. Before the railroads came in there have you any knowledge of people coming into Bath street?

A. Yes, sir.

Q. How did they get there?

A. They would drive right on the beach—come down Meadow street, or come down anyway, and drive right on the beach.

308 Q. For what purpose did they come there?

A. They would come after sand and driftwood; there used to be fishing ground along there; a man named Jess Enos used to fish there, and an old gentleman named Edson used to fish there.

Q. Do you know how people got to Stockley's pier in those days?

A. When there wasn't heavy sea they would drive along Bath street, and then take the edge of the bank, until they got Water graded, and then drive away round, if they were driving east, and wanted to get to Stockley's. An uncle of mine kept a saloon on piles—a grocery store and saloon on piling, just west of Stockley's pier, which would be on the west side of Water, at the foot of the west side of Water; his name was Owen Gallagher; there was piling out there and he had a nice platform in front, and the piles extended out into the lake, and a heavy sea would come about in the front door; would come alongside.

Q. Are you able to state how long people continued to go down on to Bath street, either from River or Water street?

A. They always continued, and more so; there was folks come down the hill after it was graded, and come down through Bath street.

Q. To the water?

A. They used to turn off to the lake, until about ten years ago, they built a fence; after they begun this gate system—this gate system has shut them off altogether; the fence extends—and there is what they call a "Y" track there, and the fence extends up to Spring street, and that shut the people off; before that you could drive over on the level, you could drive over and go towards the lake.

Q. Do you know when that fence was put up?

A. About ten years ago, I think, or a little over, to my best recollection.

Q. What kind of a fence is it?

A. It is a wooden fence—picket—large.

Q. Is there more than one fence there?

A. There is two—there is one north.

Q. Describe to the jury how those fences run, and what is the height of them?

A. The fences run east and west; they run from Water street—from the east side of Water street; they run west to Spring street, about the middle of Spring street, a street that runs north and south and ends at Front street.

Q. How high are the fences?

A. I don't know but what they are seventeen or eighteen feet—somewheres along there; that is about as near—it may be a little over, or under; it may be twenty; they are quite high, I know; I can't climb over them now.

309 Q. From the west end of those fences to the freight depot what space is there?

A. From the west end?

Q. Of the fences?

A. Of the fences, the space is dangerous; there is a lot of tracks there; and it is dangerous to cross; you can't go across, no more; there is cars standing there at times, and it is dangerous. There is the Pittsburg runs down there, and then there is the Lake Shore, with their through freight and passengers, going over the bridge—going over Whiskey Island way.

Q. Is there any switch tracks there?

A. Yes, sir, there is some switch tracks; the Pittsburg uses it altogether for switching.

Q. What did you say about cars standing upon those switch tracks?

A. There is very often cars stands there and stops people from driving over, at all, so that I have seen nobody driving over there for ten years, to my recollection.

Q. What is the distance from the west end of those fences to the freight depot?

A. It is over 200 feet.

Q. Now, how far does the freight depot extend, from the east end of the other depot, how far does it extend west?

A. It extends right to the river—almost to the river.

Q. Do you know when what is called the Cuddy-Mullen slip was put it?

A. The Cuddy-Mullen—they started to drive piling in there in 1895—the spring of 1895.

Q. There was no slip there prior to 1895?

A. No, sir, not the Cuddy-Mullen.

Q. Do you know who built that slip?

A. Well, I understood—I inquired—it was the standard Construc-

tion Company; I understand that it was the Pennsylvania Company that they were working for; so I understood.

Q. Are there any other slips down there on the Lake shore?

A. They have made one since, I believe the Pennsylvania has.

Q. Since 1895?

A. They have made that slip in there lately, right on the west side of Water, parallel with it, there, they put in a slip.

Q. And that you say was built since 1895?

A. Yes, sir, then a round house was put up west of that—the Big Four put a round house—the Cleveland, Columbus & Cincinnati, commonly called the Big Four.

Cross-examination of FARRELL GALLAGHER.

By Mr. CLARKE:

Q. I suppose your recollection of dates is not very precise in the first part of this period that you are covering, you being six or seven years old?

310 A. There is some things that I can remember just as well.

Now, in 1852, Mr. Clarke, I remember of General Scott landing there; he came there at the foot of Water, and come right up in the procession; I remember where I stood at the time.

Q. The freight station was there at the time, was it?

A. The Cleveland & Pittsburg was there.

Q. The old freight station was there?

A. The Cleveland & Pittsburg had not extended——

Q. I mean the Big Four freight station, out by the river, and on the north side of Front street, that was built at the time General Scott came?

A. They were building that.

Q. Wasn't that completed in 1851?

A. It wasn't entirely completed, they run passengers down there for a while.

Q. They were using it for a passenger station and freight station both, at that time?

A. Yes, sir.

Q. And don't you remember that when the Big Four was opened it was on the 22nd of February, 1850?

A. I hear somebody say that it was opened right through to Columbus, at that time.

Q. And brought the Legislature up?

A. I heard some talk about them bringing the legislature up

Q. And they took them down on the C. & P. as far as Ravenna?

A. Well, I heard talk about that.

Q. And they didn't get back until midnight?

A. Well, I don't know—whether they called in at the tavern, or not, I didn't hear.

Q. Now, this was all on the 22nd of February, 1850?

A. I heard them talking about it, yes, sir,—1850?

Q. Yes?

A. No, sir, there wasn't no railroad there in 1850.

Q. Are you clear on that?

A. Of course I am clear; a cousin of mine died with the cholera—several died on the beach with the cholera.

Q. In 1850?

A. Yes, sir; a sister of mine took the cholera.

Q. I don't suppose anybody could have died with the cholera if there had been a railroad there?

A. Well, there wasn't any railroad there. Sometimes a railroad fetches cholera, too, or somebody with it.

Q. The first building there was this old freight station, the Big Four station?

A. The first building was down below, on the river; somebody moved an old church there; it was moved down there and used as a temporary place for a while, a make-shift, and they had a blacksmith and boiler shop there together.

Q. Now, about the same time this freight station was put
311 there, or very shortly afterwards, right opposite the end of Spring street, there was built a round house and then a machine shop?

A. You built a round house, right on the shore, at the end of Spring street, the water came up to the north side of it, when you started in.

Q. That round house, as I remember it, came up to the north side of Front street, as it is now—that is, the south wall of it?

A. Yes, sir, very near, as it is now.

Q. Of course the balance of the building was towards the lake?

A. It was towards the lake.

Q. And it was on piles?

A. The round house?

Q. Yes, the north side of it?

A. They used some piling on the north side, I remember a locomotive, one night, went bang through the turntable and went in the lake. The Pittsburgh was outside, on piling, and the Lake Shore.

Q. And the water was so near to Front street that when the engine went through the round house it went into the lake?

A. The water had receded somewhat, from Spring street, because it went through the north side of the building.

Q. A year or two after that, or two or three, after that, they built a big passenger station out on piles, further north?

A. They built west of that, but run north. They started driving piles at the west end, and they drove piles out in the lake, and put a little depot out on the end of the pier; they put a depot out on the end of the pier, and steamboats landed there.

Q. And they built a large passenger station on piles, too, didn't they?

A. Afterwards they built inside, there, on piles.

Q. And that stayed there from 1853 or 1854 up until 1865 or 1870, until after the new Union station was built?

A. That stood there until after the Union station was put there; of course it was used for storage.

Q. The water washed up under that old passenger station all those years, until they took it down, didn't it?

A. Yes, sir.

Q. And they used to fish off of the platforms?

A. Yes, sir, they fished, sir.

Q. And about the same time they built this old freight station on the north of Front street, as it is now, they built the freight station further out that they called the pier freight house?

A. They built what they called the pier freight house, they built west of that.

Q. West and north?

A. West and north, and out towards the government pier; it still stands there.

Q. Now, I guess you have in mind the C. & P., and I am thinking—

A. The C. & P. was the first one, after you built your passenger station, the C. & P. was the second one.

312 Q. Now, there are two of those C. & P. freight stations; one is south of the other. Which was built first, the most southerly one, or the other?

A. Which one do you mean?

Q. The C. & P. has two freight stations there now.

A. They was built a few years ago.

Judge SANDERS: The ones down on the river?

The WITNESS: At first they built an old freight house, and that burned down. I think the latter part of 1868; there was a big fire—

Q. Now when was that built?

A. That was when they first went on the pier, they built that.

Q. That would be along back in 1850 or 1851?

A. That would be along about 1853, when they finished that. And then a little later they put up what was used just a short time, for an elevator, and then finally turned it into a depot, north of that, and joined them. It remained there until 1868 or 1869, and it burned down, and then they put up the present brick.

Q. And they have been there since about 1868 or 1869?

A. Somewhere along about that.

Q. How about that Lake Shore pier freight house?

A. The Lake Shore pier was put up after they put the C. & P. pier up.

Q. It was put up before the old passenger station, wasn't it?

A. Out on the pier?

Q. Yes.

A. No, sir.

Q. Are you clear on that?

A. Yes, sir, I am clear.

Q. What year would you put this pier freight house, as having been built?

A. About 1854. A steamer called the Caspian was laying on the west side, and a northeaster come on in the afternoon, and she broke loose and she struck on the piling, just about where the pier freight house stands, and she sunk, and was wrecked there.

Q. That is the time they say the waves dashed over the old freight house?

A. Yes, sir, they dashed pretty high that day.

Q. This pier freight house was built out on piles, of course?

A. Yes, sir.

Q. In 1854 or 1855?

A. Yes, sir.

Q. And the steamers used to come in by the side of it and load and unload?

A. Yes, sir.

Q. And that has been there ever since, and is there yet?

A. It is there yet, sir.

Q. Now, that territory there north of the present north line of Front street, has been gradually filled in from year to year?

A. It has been filled in by everybody dumping there. The city had it for a dumping ground, and people hauled sand away from there; the city allowed them to haul sand and dirt, and everything else, away from there.

Q. You say people drove over those tracks until about ten years ago?

A. Yes, sir, they drove over them tracks.

Q. And then the railroad company put up a bridge, didn't they?

A. Yes, sir.

Q. And they drive over there yet, down to the freight station?

A. Yes, but they kept filling in, and kept people away from the beach; they used to get sand there, and they were dumping there, and there has been a great many improvements around there—

Q. Now, about this bridge: The bridge leads down to the freight station?

A. Yes, sir.

Q. And people go down there to get freight, and get coal?

A. One part leads to the coal pier and the other leads toward the freight house.

Q. Formerly they drove over the tracks?

A. Yes, sir, they drove on Front street, there, and then they was—

Q. They went to the foot of the hill and turned over—

Mr. LAWRENCE: Let the witness finish his answer.

Q. I say before the bridge was put up they drove over the tracks, at the foot of the hill?

A. They used to drive over the tracks at the foot of Water, and then they used to drive over at the foot of Front street, or at the foot of Spring street, west of Spring street; and they used to drive on Meadow, until you put up an addition on that brick; until you built your brick freight house, they used to drive over there.

Q. That was built along about 1865; wasn't it?

A. No, later than that; along after the war; you didn't do any building there—you ain't done much there since the war.

Q. What year do you think that brick house was built there?

A. I think it was built in 1869, I would think; still I wouldn't be positive of the year, but I am positive it was after the war.

Q. Wasn't it before the passenger station was built?

A. After the station was built—west of the passenger you ain't

made a great deal of improvement since the war; you moved your machine shop and everything else away.

By Judge SANDERS:

Q. When you first came to Cleveland your family lived down there on a part of this property?

A. Yes, sir.

Q. That was in 1849?

A. 1849, sir.

Q. And other people were living there?

A. Yes, sir.

314 Q. And about how many?

A. Oh, there was a lot of them; there was Gallaghers, Gibbons, Bramleys, and Rileys, and Razzles, and an old man named Newcomb, and to help the whole thing along there was a colored family by the name of Bryant.

Q. And did these buildings where these people were living, extend the full length of the street, from Water to the river?

A. No.

Q. Where were they, mostly?

A. No, sir,—they extended from west of Spring street, or rather west of Spring street they began, and extended down to the pier on the north side of Bath street.

Q. And it was after the railroads were built in here that those houses were moved, you say?

A. Them houses began to move away to make room for the tracks, down where the old freight house stands today.

Q. And what did you say was the first building you remember was put up down there by the railroads; the Big Four freight house?

A. Yes, the Big Four, the old portion, that is towards the river; it stands there today.

Q. And at that time the water came up to that freight house, did it, on the north?

A. Yes, sir, the water came clean up—came upon the south side of it.

Q. The water washed in under it?

A. They filled in there sir; they took some of the filling and hauled it down—some of the grading that they had done on Spring street.

Q. It was built on piles, to some extent?

A. The outer wall was, yes, sir, the outer foundation.

Q. Now, what was the next building that you remember was put up there by the railroad?

A. By the railroads—they had some temporary buildings put up there.

Q. Some permanent buildings, I mean.

A. The permanent building—they started to put up a—a man named Sizer put up a moulding shop—how he was connected with the railroad I don't know—he built near the water, and when they put up a permanent building they put up a brick round house; the turntable is yet there, on the same site, where the old turntable is now.

Q. Was that round house built on piles?

A. The outer part was; there was some piling on the shore.

Q. So that the water washed up to it?

A. Yes, came right up to the wall, sir.

Q. What was the next building they put up?

A. Then they put up some frame buildings that they used for machine shops.

315 Q. Were they on piles?

A. No, sir; they had drove some piles on the north side of the brick, though.

Q. They were right on the water, so that they had to have piles, to protect the buildings?

A. They had to protect them; there was some little filling down north of the buildings.

Q. There were two round houses there, do you remember—one of the Cleveland & Pittsburg's or Pennsylvania Company, and one of the Toledo road?

A. My recollection is that the Pennsylvania Company kept their round-house out on Alabama street, near Leonard Case's landing. Afterwards the Lake Shore came down there and bluffed Owen Gallagher, an uncle of mine out, and told him to get, and said they were the people and took possession; he was an innocent old Irishman, and he didn't know his rights.

Q. Did you understand that your uncle owned that property?

A. I understood that he bought somebody on there—bought out the house there, and was right around there.

Q. You understood that he was claiming to own it, did you?

A. Yes, he was owner of the place.

Q. How about the other people living there, were they claiming to own the property?

A. Well, sir, they lived on leases—them people west there.

Q. Lease from whom?

A. From the City of Cleveland.

Q. The city was leasing this property?

A. Yes, sir.

Q. How much of the roadway had they left there?

A. They had quite a roadway—they had probably sixty or seventy feet across.

Q. And north of that they were leasing it out for various purposes?

A. They were leasing lots there.

Q. For dwelling houses?

A. Yes, sir.

Q. And for business purposes?

A. There was dwellings there; they were working people there that worked at the coal yard.

Q. And some of these people, as you understood it, had leases from the city?

A. Yes, sir.

Q. And some of them, like your uncle, claimed to own the property?

A. He owned the property down there—he claimed to own the property, sir.

Q. Do you know who he bought it from?

A. I did not know, sir.

316 Q. How many years did you understand he had been there?

A. Well, I think he come there in—I heard that he come there in 1847—1846 or 1847.

Q. Now, to go on with these buildings: After the round-house that you told us last about, what was the next building you remember being put up there?

A. The next building, after they got through with that—the piles were drove out in the lake and then they started a passenger depot; the passenger depot that stood on piles in an "L" shape, and was built, the Cleveland & Toledo occupied it, the Pittsburg occupied the north part. The only thing left today is just a little piece where the ticket office stands—the Cleveland & Pittsburg ticket office.

Q. That was the first depot used that way, by the three roads, was built on piles?

A. Yes, sir.

Q. And water washed in under it?

A. Yes, sir, washed in and washed away.

Q. And the tracks that they entered that station by, were built on piles, were they?

A. They were built on piles.

Q. And that station continued to be used until the present Union passenger station was built?

A. Yes, sir.

Q. Now, what other buildings were put up down there?

A. Well, there was a little building put up west of the depot, for the engine company, that they called "Lake Erie No. 11." Then, during the war the Sanitary Commission had a building there, erected for soldiers, so that they could rest, or if they were sick or tired—

Q. I mean these railroad buildings, freight houses, and so on? When these were built out on the pier, the government pier, or wharf?

A. The present building, away out on the end?

Q. Yes?

A. That started since this law suit.

Q. I don't mean them; I mean the old ones there?

A. The old one I think was in 1853. You see you come down on piles—the Cleveland & Pittsburg come from Seneca street to—the Lake Shore had taken their place, had come in right over the same place, the Cleveland & Erie.

Q. The Cleveland & Pittsburg built a depot there, which is still standing, as early as 1853, you think?

A. No, sir, it is not still standing; it is burned down, sir.

Q. When was the oldest one that is there now, built?

A. Right after the fire, probably 1869.

Q. Isn't there one of them that was built very much earlier?

A. No, sir, they were swept away.

317 Q. At all events, those old buildings that they had were built in 1869, and they used to run out to them carrying their tracks out on piles?

A. Yes, sir, they had to come down—they had to come down on water—it wasn't very deep—probably about two or three feet of water.

Q. In other words, from 1849, when you first remember about this, these railroad tracks and the various railroad buildings that were put up there, were run on piles, were they not, and the water either washed clear in under them, or washed up against the north side of them?

A. The Pittsburg, they washed up against the north side; previous to when your depot came in there, Todd and Rhodes had a coal yard?

Q. Where was that Rhodes coal yard?

A. Rhodes' coal yard was the furthest north, and then south—

Q. Where was it with reference to Water street?

A. It fronted on the government pier, east—it was north of Front street.

Q. And it had a river front, did it?

A. Yes, sir a river front.

Q. And Mr. Rhodes had kept that a good many years?

A. I don't know how long; after that he moved over just where the—just south of where the big bridge is, there, where the bayou was, in there.

Q. This property that Mr. Rhodes was occupying, was that dry land, or did he have a platform built out on the water?

A. They shoveled the coal out on the dock and then wheeled it across. There was some sand there. They wheeled it out on the sand. They had some planking laid there. There was more of a beach, the further you come up the northeast wind made the beach larger when you come to the westward, so as to give them a chance to go—he wheeled his coal east.

Q. Ever since you have been personally familiar with this property, Front street, or what used to be called Bath street, has been one hundred and thirty-two feet, down there, in a straight line, and the property north of that hundred and thirty-two foot line has been occupied for these various other purposes that you have told us about principally by the railroads?

A. It was principally by the railroads, and people went across there back and forth—the railroads had tracks there.

Q. But the street down there, proper, ever since you have known it, has been a street one hundred and thirty-two feet wide, hasn't it?

A. The exact width I never heard; it was quite wide though—very wide.

318 Q. At all events you have always understood, have you not, since you were familiar with it, that these freight depots, and other buildings that you have been describing, were north of Front street?

A. Yes, sir—on Front street. No, I understood they were right on Front street.

Q. How wide did you understand Front street was?

A. I didn't exactly know the width of it. I understand they

were on the north side of Front street, on the street that they occupied there where the houses stood.

Q. You mean that they fronted on Front street?

A. Yes, and was out on the street.

Q. And the balance of them were over the water for the most part?

A. Some over the water.

Q. Those houses that you speak of, that were there just before the railroads, some of the people claimed to own and some had leases from the city—they fronted on Front street, didn't they—right up to the street line?

A. Well, I could not say whether they were on the line or not—that I wouldn't say, sir.

Q. About what would the distance be from the south front of those houses, to the south line of the street?

A. Well, where we were—from where we were it wouldn't be over seventy feet; it wouldn't be over seventy feet over to the Bath street house, on the south side of the street.

Q. So that the distance between the general line that these houses were built on, and the south side of Front street, would not exceed seventy-five to a hundred feet, would it?

A. That, I couldn't say, whether every house was in line, or not.

Q. I understand, but about that distance. You say yours was only about seventy-five feet?

A. About seventy-five feet, as near as I could get at it.

Q. When was your house taken away?

A. It was taken away when the railroad come, the cousins took it; my father never owned any there; he moved to the four sisters; I lived about seven hundred feet away, and was back and forth.

Redirect examination of FARRELL GALLAGHER:

By Mr. LAWRENCE:

Q. Where did this Bath street house stand that you speak of?

319 A. The Bath street house stood on the southeast corner of Meadow and Bath street; it stood until a few years ago, and was used as a coke house.

Q. Was that there in 1849?

A. Yes, sir.

Q. Did it front on Bath street?

A. Yes, sir, it was right on the corner.

Q. Do you remember any other buildings that were along the south side of Bath street, fronting on Bath street?

A. Yes, sir; there was a foundry west of that, I think, called the Eagle Foundry; a man named Franklin run it—a man named Shanks and Franklin run the foundry and machine shop; and then Mr. George Thompson had a barn down further, and then the Railroad hotel was burned in 1876.

Q. Was that there in 1849?

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A. Yes, sir. The Otis elevator burned in 1876, and the fire jumped across the street and burned that railroad house.

Q. Do you remember any other buildings there?

A. Yes, sir, a man named Hayward kept a mill there, that he manufactured millstones in, there.

Q. Do you know how the people that occupied those buildings got to them?

A. They came down around Meadow and they come up River street, and come down the best way they could, down Bath street, down the hill, until it was graded; or if they wanted to come easy, without coming down a steep hill, they come down, partially down Front street, and then took a turn and then go east and then come down along the beach—come in between Owen Gallagher's, and on the roadway between that and the bank—Front street.

Recross-examination of FARRELL GALLAGHER:

By Mr. SANDERS:

Q. Do you remember when that hill, from Water street down to Front street was graded first?

A. I think it was in 1850—I think by a man named McGillicuddy.

Q. That was about the time the railroads came in, in 1850?

A. The railroads came after.

Q. You were only seven years old then?

A. Yes sir.

Q. I don't know how much you remember about that?

A. Oh, well, I remember just as well as today—I don't change.

Q. Then it is your recollection, looking back when you were seven years old, that up to the time that McGillicuddy graded it, Bath street had never been improved in any way?

A. Yes, it had been improved, every now and then; the corporation—the street department used to take and repair it every now and then.

Q. Were you familiar with the street department when you were seven years old?

A. I seen them working off and on. There was a lame man named Shields used to be foreman, for a great many years.

Q. At all events, in coming down that hill, up to the time they graded it, they had to go down west and then back east, and work their way down to the beach?

A. Yes, sir, until that was graded, and then if the people wanted to go east, out to Stockley's pier, after the Cleveland & Pittsburg built their pier, they would have to go down that short road.

Q. You think it was graded in 1850, do you?

A. Yes, but the road where you turned east wasn't done away with until you built the Union Depot.

Q. You went there in 1849?

A. Yes, sir.

Q. So that your knowledge about the street department when you were six or seven years old—

A. I remember of seeing the lame Irishman there.

Q. So that your knowledge about the street department, on that subject, was confined to what you learned between six and seven years old, during the year 1849?

A. No, it was later than that, that I seen Mr. Shields fixing the street.

Q. That was after it was graded you mean?

A. Yes.

Q. I thought you wouldn't tell us what happened before you got there?

A. Oh, no; I didn't understand you on that, Judge.

And further to maintain the issues on its part, the plaintiff offered and read in evidence testimony of H. F. MARSHALL, as follows:

By Mr. LAWRENCE:

Q. What is your name?

A. H. F. Marshall.

Q. Where do you live?

A. 34 Vestry street, this city.

Q. How old are you?

A. Going on seventy.

Q. How long have you lived in the City of Cleveland?

A. I was born here.

321 Q. Were you familiar with what is known as Bath street?

A. Yes, sir, I was, for the first fifteen or sixteen years of my life.

Q. When do you first remember Bath street?

A. Oh, 1838 or 40.

Q. What was the condition of the street at that time?

A. Well, it was all open, more or less; it was used by a good many squatters, in there.

Q. Go on and tell what you know about it?

A. It was all open through there, with the exception of squatters building shanties, and fishing, and hauling of sand and hauling wood, and anything of that kind.

Q. Who hauled wood and sand?

A. Anybody that went in there.

Q. And who fished there?

A. Well, different parties; there was Mr. Edson and Wilde and a man named Jess Enos—I think he is alive now; they had regular nets and fished in there for years and years.

Q. Do you know how people got down to the beach in those days?

A. They either went in from East River street, or went around Light House street, to Spring street and in through there—where Spring street is now; that was the only way to get down there.

Q. How did they get to the beach after they got that far?

A. They were near on the beach when they got that far.

Q. Suppose they wanted to come up towards Water street, how did they drive?

A. They had to come up East River street.

Q. After they got to Bath street, how did they come?

A. They come up on the beach.

Q. On Bath street?

A. Yes, sir.

Q. And from 1838 on, how long were you acquainted with the street there?

A. I was acquainted with it more or less until I got to be a young man and went to work.

Q. When was that?

A. That was along in 1844 or 1845.

Q. Do you remember where Stockley's pier was located?

A. Yes, sir.

Q. Where was that?

A. It was east of the present pier, but I don't know how many feet.

Q. How did people get to Stockley's pier?

A. I wouldn't be certain how, whether they started from his or another dock. He had, I think there was a coal yard in there somewhere.

Q. On the beach?

A. On the Stockley pier.

322 Q. Have you any knowledge of the people getting down on the beach for coal—to go to Stockley's pier, or to get coal?

A. Oh, yes, I think they did.

Q. How did they go?

A. They went in from Meadow street and Spring street and East River street; there was no particular road through there. If a man went down there with a wagon he had to work through past them squatters' shanties, and get onto the beach the best way he could; there was no regular thoroughfare or road.

And further to maintain the issues on its part, the plaintiff offered in evidence the map which was identified by Mr. Dercum, and the same was marked Exhibit 6, and is filed herewith and made a part hereof.

And further to maintain the issues on its part, the plaintiff offered and read in evidence the testimony of W. H. SCRIVENS, as follows:

By Judge PHILLIPS:

Q. What is your name?

A. W. H. Scrivens.

Q. What relations do you sustain to any of these companies?

A. Superintendent of the C. & P. Railroad—the C. & P. division of the Pennsylvania Company.

Q. How long have you been superintendent?

A. For three years.

Q. Are you familiar with the main tracks of these roads that cross this land that is in controversy?

A. Yes, sir.

Q. How long have you been familiar with them?

A. About ten years—about nine years and a half, I should say.

Q. Will you point out on this map, Exhibit "No. 6," the main track or tracks of the Lake Shore road?

A. I do not feel that I am competent to say which are the main tracks of the Lake Shore road, except as I understand it. I have never been in the employ of that road.

Q. As I used the term, I meant the tracks on which they pass their cars through the city?

A. My understanding is that these two tracks are the main tracks (indicating). There is a gauntlet over the bridge. These two tracks (indicating) being the second and third north of this combined freight house, and being the first and second north of the Union Passenger depot.

Q. They come together just this side of the river?

323 A. There is a gauntlet operated across the river, and they spread again east of the river, and again west of the bridge, and come together on the bridge.

Q. Is there a single track over the bridge?

A. There are four tracks operated as a single track, but it is a gauntlet—they come together as one track, operated under double track rules.

Q. Will you point out what are the main tracks of the C. & P., used by the Pennsylvania road?

A. All the through tracks are what might be called main tracks; they run over to Whiskey Island and the coal yards, here (indicating). We don't run any passenger trains west of the Union depot, and we have no through freight trains that run west of the Union depot.

Q. Am I right in understanding that your company has no tracks extending through the city across this land?

A. Not at all, sir; we have five tracks north of the—we have four tracks north of the Union Depot, parallel with the Union depot, which are the fourth, fifth, sixth and seventh, north of the Union depot wall.

Q. And where do they go, to, going westward?

A. They go to Whiskey Island, and to the freight yards and to the coal yards.

Q. Do your main tracks connect with the bridge across the river?

A. The tracks we have spoken of all go across the river; they connect with the track across the river.

Q. Does your company run its trains through the city on those tracks, and across that bridge?

A. I don't know just what you mean by "through the city." Of course we use that bridge in common with the Lake Shore.

Judge SANDERS: You use it for the Whiskey Island terminals?

The WITNESS: Yes, sir.

Q. Your road, then, does not run westward from here?

A. We run, as I have said before——

Q. This is the terminus of your road?

A. It is the terminus of the Cleveland & Pittsburg Railroad, Cleveland is, yes, sir.

Q. Now will you point out the main track of the Big Four road, as they come onto this land?

A. Right around here (indicating).

Q. Can you designate and tell us which they are?

A. Only by indicating; I don't know just how I could give them by name.

324 Q. Where do they come in with reference to these fences marked there?

A. They come in between them.

Q. And run into the Union Depot?

A. They run up to the beginning of the Union Depot Company's property. I don't know just where the dividing line is between the Big Four and the Union depot.

Q. Do their cars run to the Union depot, and run into it?

A. Yes, sir.

Q. And where are their main freight tracks?

A. Here (indicating).

Q. Running to that freight house?

A. And here also (indicating); they use these also, as the main freight tracks, for interchange with the Lake Shore and the C. & P.

Q. By "these" do you mean the first tracks north of the depot?

A. The same ones as I indicated as being the Lake Shore tracks. The main tracks all come together, and this is a house track (indicating) and this is the Pennsylvania Company tracks (indicating).

Q. How many tracks come together, across the river, going westward—designate them and tell what tracks they are?

A. The second north of the combined freight house; also the third and fourth.

Q. Those tracks (indicating)—those tracks that apparently terminate there do, in fact, terminate there, do they?

A. Yes, sir.

Q. The fifth, sixth and seventh tracks north from the combined freight house—they terminate opposite the freight house?

A. The westerly end terminates there, yes, sir.

Q. Do you know who built the Cuddy Mullen dock—do you know what company had it built?

A. Yes, sir.

Q. What company?

A. The Pennsylvania Company.

Q. When?

A. I am not certain whether that was in 1895 or 1896; it was one of the two; I think it was in the winter of 1895 and 1896.

Q. And what use is made of it?

A. It is used for unloading coal from cars into boats.

Q. Is that all the purpose?

A. That is all it is used for, yes, sir.

Q. Coal from what cars—from cars of your company?

A. Yes, sir.

Q. Has your company leased them to the Cuddy-Mullen Company?

A. Yes, sir.

Q. Now, the slip east of the Cuddy-Mullen slip—

A. This one (indicating)?

325 Q. Yes. What company constructed that?

A. The slip was there—do you mean the docks around the slip?

Q. Yes.

A. The Pennsylvania Company.

Q. When?

A. In the spring of 1898.

Q. And what use is made of that?

A. Of the slip, or the dock?

Q. Both.

A. The slip is used, incident to the work that is done on the docks. The westerly dock is known as the Tucker dock and is used for lake transfer business, for transferring freight that originates up the lakes, to our cars, and from our cars to upper lake ports. I want to make a correction here, if you please. In enumerating tracks, I think I got that wrong. The C. & P. tracks are the third, fourth, sixth and seventh. I think I said third, fourth, fifth, sixth and seventh. It is the third, fourth, sixth and seventh.

Cross-examination of W. H. SCRIVENS.

By J. H. CLARKE, Esq.:

Q. I suppose the term main track is a relative term, and you speak of the Lake Shore having two tracks there, which you have given as main tracks, and those are tracks, I suppose, on which the through traffic is carried?

A. To the best of my knowledge it is, Mr. Clark. I said that I could not tell positively, because I am not thoroughly acquainted with their method of operation, but simply from observation, I would say that they were the tracks.

Q. Now, there seems to be two tracks leading up to this freight station marked "L. S. & M. freight house"—I suppose they might be properly denominated main terminal freight tracks?

A. I should say so.

Q. And here are three tracks immediately east of that—are you sufficiently acquainted with those to say whether those are in constant use?

A. Yes, sir; they are in constant use.

Q. What do you say as to all the tracks that appear here, delineated upon this map?

A. They are all in constant use.

And further to maintain the issues on its part, the plaintiff offered and read in evidence the testimony of JAMES WILLIAM STURTEVANT, recalled, as follows:

By Judge PHILLIPS:

Q. Mr. Sturtevant, I wish you would give us the distance in feet from the southerly line of Bath street, or what is now called Front street, northward to a point where a line drawn parallel with the southerly line of Front street, would lie north of all those 326 tracks running on the north side of the Union depot. A line run clear through here (indicating), parallel with the south line of Front street, where it would lie immediately north of all those tracks?

A. Just north of these tracks here (indicating)?

Q. Yes; so as to embrace them, if the line were extended eastward?

A. 365 feet.

Q. Now, apply your rule at this point, south of the combined freight house, and just east of East River street, and see where that measurement would bring you to, here (indicating). Take the same distance from the southerly line of Front street there, and see where it would bring you to here (indicating)?

A. That is 35 feet north of the south side of that shed (indicating).

Q. Just mark the point there?

A. (Witness does as requested.) I have marked it "A."

Q. That would embrace, then, all these tracks—these seven tracks?

A. Yes, sir.

Q. Could you draw a line from the river, past the Union Depot—the line I have indicated, 365 feet from that—could you draw it on this map, Exhibit No. 6, with something?

A. Yes. (Witness did as requested.)

(No cross examination.)

Whereupon the plaintiff rested.

The matter on this page is stricken by the court.

WILLIS VICKERY,

Trial Judge.

Defense.

The defendants, The Lake Shore & Michigan Southern Railway Company and The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, to maintain the issues on their part, offered in evidence copy of a map, designated upon the copy, Copy of the Harbor of Cleveland, Ohio, with two plans for an additional harbor.

(Signed)

J. H. SMITH,

Superintendent, etc., 1837.

Said map was marked Defendants' Exhibit 1, and same is hereto attached and made a part hereof.

And further to maintain the issues on their part, defendant, The Lake Shore & Michigan Southern Railway Company and The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, offered in evidence the Contract of September 13, 1849, between the City of Cleveland and The Cleveland, Columbus & Cincinnati Railroad Company.

Judge SANDERS: I would like it understood that this contract is in for all purposes, so that we will not be obliged to reoffer it when we come to our case.

Said contract is as follows, to-wit:

This indenture, made this thirteenth day of September, in the year of our Lord Eighteen hundred and forty-nine, by and between the City of Cleveland, by F. W. Bingham, Mayor of said city, thereunto duly authorized by resolution of the City Council of said city, party of the first part, and the Cleveland, Columbus & Cincinnati Rail Road Company, by John M. Woolsey, Vice President thereof, thereunto duly authorized by resolution of the Board of Directors of said Company, party of the second part, witnesseth:

That said City of Cleveland, in consideration of the sum of Fifteen Thousand Dollars, received by said city of said Rail Road Company, in the capital stock of said Company, for which a certificate for one hundred & fifty shares, of one hundred dollars each, full paid of said stock, hath been issued to said City, the receipt whereof is hereby acknowledged, and also in consideration of the covenants of said Rail Road Company hereinafter contained; Hath granted, and by these presents doth grant to said Rail Road Company, as fully and absolutely as said city or the constituted authorities thereof have the power or legal authority so to do, the right to the full and perpetual use and occupancy for their Rail Road tracks, turn outs, engine & car & passenger houses, turn tables, water tracks or stations, avenues to and from the same, leaving open spaces between when deemed expedient, and other purposes connected with, and necessary for the convenient use and working of said Road, all of Bath Street in said City of Cleveland, situate northwardly of a line drawn parallel with the Southerly line of Bath Street and one hundred & thirty two feet Northwardly at right angles therefrom—excepting & reserving therefrom a piece or parcel bounded Southerly by the last described line—Eastwardly by a line drawn parallel with the westerly face of the Stone Pier so called, and one hundred (100) feet Eastwardly therefrom—and Northwardly by a line drawn parallel with the south line of Bath Street and two hundred and eighty-two (282) feet Northwardly therefrom, which is reserved for public use as a part of Bath Street & also reserving & excepting therefrom a strip of twenty five feet in width bounded Westerly by the West face of said pier & Eastwardly by a line parallel therewith & twenty-five feet therefrom & extending from the Northerly line of said last described parcel of and along said pier to the Northwardly end thereof as it now is, or may be hereafter extended, which is to be kept open as a public highway, and shall not be obstructed by said City, or by any person or persons, or company claiming through said city or by their permission.

To have and to hold the same to the said Rail Road Company, its successors & assigns, upon the terms and subject to the stipulations & conditions following, that is to say:

Said Company shall take and hold the same subject to all legal claims either in law or equity, of any person or persons, company or companies—It being expressly understood that the city does not guarantee nor warrant either the title or the right to occupy the same, the said Rail Road Company to have all the money compensation, interest benefits & rights which the city could in any manner be entitled to on account thereof.

Said Company shall save said city harmless from all damages to persons holding any part or parts of the premises under leases from the city, consequent upon the taking possession of the ground so leased, or in any way depriving them of the full enjoyment of their leasehold interests before the expiration thereof, it being understood that this indemnification is to extend to such damages only as the city shall be legally holden to make good to the claimants thereof.

All leases made by the City of the parts of said premises shall be assigned to said Company—said Company to have the right to collect & receive the rents hereafter accruing, and shall pay over to said City two-thirds of all rents collected on land fronting on the River & lying between the South line of Bath Street & a line parallel therewith & 282 feet Northwardly therefrom, until said Company shall deliver to said City the possession of said strip of 100 feet in width next to the pier hereinbefore reserved.

And said Company shall not renew or extend said leases, nor grant any new lease of any part of the premises which will interfere with the opening of Bath Street to the width of 132 feet, or of the extension thereof on & near the stone pier as hereinbefore described.

The said Company shall not lease any part of the premises to any person or persons, company or companies, to be used for conducting or carrying on forwarding, storage or commission business, or for the erection of warehouses thereon for the accommodation of such business—nor shall said Company use said premises or any part thereof, for the purpose of engaging in, accommodating or aiding in the transaction of forwarding, commission or warehousing business, with a view either directly or indirectly of deriving profit therefrom, nor shall they grant the right to any Rail Road Company, person or persons, or other company or companies so to do.

329 But this prohibition shall not be construed to prevent said

Rail Road Company from erecting on said premises a suitable warehouse or warehouses for the reception and safe keeping of such articles of property as may be entrusted to their care for transportation and not consigned to any person or persons or company in Cleveland having the means of storing the same—It being the object and intent of the parties to this agreement to provide that said premises shall not be so used as to interfere or come into competition with individuals, companies or firms engaged in forwarding, commission, storage or warehousing business in Cleveland, by carrying on or engaging in by said Company, accommodating or aiding in forwarding, commission, storage, warehousing or other

business not necessary to secure the transportation of property over their road, but may be used by said Company for all purposes necessary for the convenient and profitable working of their road, subject to the restrictions aforesaid.

Said Company to take and hold said land subject to all the legal rights & claims of the Cleveland & Pittsburg Rail Road Company upon the same, and to have all the benefits to accrue from such claimants as is before provided, and as a further provision for the same, shall upon reasonable and equitable terms, extend to said Cleveland & Pittsburgh Railroad Company and the Cleveland, Painesville & Ashtabula Railroad Company, room for warehouse and passenger depots, and such facilities for coming out on to said premises with their cars, engines & tenders, for the reception and delivery of passengers, baggage & freight, subject to the same restrictions as to warehousing, forwarding & commission business as are herein imposed upon the Cleveland, Columbus & Cincinnati Rail Road Company, and for transferring them to or receiving them from other Rail Roads, or from Steam Boats, either by independent tracks, or by the use of the tracks laid by the Cleveland, Columbus & Cincinnati Rail Road Company, as shall be found most convenient to all concerned, and in case the parties cannot agree either as to the terms or manner of occupying such part of the premises as may be so required, the same shall be determined by three competent disinterested men, one to be chosen by each party & the third by the two so chosen—It being however understood that the Cleveland, Columbus & Cincinnati Rail Road Company shall not be bound to permit either of said Rail Road Companies to use for car, engine or warehouses, or grounds on which to place or dispose of cars, engines, tenders, or other furniture of their roads, any part of

330 said premises which said arbitrators shall decide is necessary for those purposes to be used exclusively by said Cleveland, Columbus & Cincinnati Rail Road Company—It being further understood and agreed that no part of said premises shall after two years from this date, be used by said Cleveland, Columbus & Cincinnati Rail Road Company, for forges, furnaces, work shops or anything of a similar character for the manufacture of cars engines or other machinery, so as to deprive either of said other Rail Road Companies of the full benefit of the use of part of said premises intended by this agreement to be extended to them.

Said Cleveland, Columbus & Cincinnati Railroad Company shall manage and take care of all suits, or actions now pending or which may hereafter be commenced for obtaining possession of said premises or any part thereof, and may compromise or settle such suits—And said company shall save said city harmless from all costs and charges on account thereof, except such as have already accrued against the city, and in case of settlement, shall save the city harmless from all legal costs in the case in Court in Bank, except the costs made by the city—And shall further save the city harmless from all legal claims or demands which are now or may hereafter be set up against the city, growing out of the use or occupation of said premises by said city or its tenants or lessees—And to enable

said Company to compromise & settle with the claimants Lloyd & Camp & all other claimants for the extinguishment of their claims to said premises or any part thereof, they may allow them to retain such portion thereof as may be necessary to effect such settlement, and as shall not be deemed necessary to be used for Rail Road purposes.

And the said Cleveland, Columbus & Cincinnati Rail Road Company doth hereby covenant and agree to & with said City that said Company will hold said premises upon the terms and subject to the stipulations and conditions herein recited, and will do and perform all & singular the acts required and abstain from doing and performing all & singular the acts prohibited by the terms and stipulations herein recited.

In witness whereof the City Council of said City of Cleveland have caused to be hereunto affixed the seal of said City and these presents to be subscribed by the Mayor thereof. And the Cleveland,

Columbus & Cincinnati Rail Road Company have caused to
331 be hereunto affixed their corporate seal & these presents to be subscribed by their Vice President the day and year first above written.

THE CITY OF CLEVELAND,
By FLAVEL W. BINGHAM, *Mayor*.

[Seal of the City of Cleveland, Ohio.]

THE CLEVELAND, COLUMBUS & CINCINNATI RAIL ROAD COMPANY,
By JNO. M. WOOLSEY, *Vice President*.

[Seal of the Cleveland, Columbus & Cincinnati Railroad Company.]

Signed, sealed & Delivered (the words "Alfred Kelley" in the 6th line of 1st page being first erased & the words "John M. Woolsey Vice" interlined above such erasure. Also the word "Vice" being first interlined above the second line from the bottom of the last page). In Presence of

JAS. D. CLEVELAND.

D. W. CROP.

STATE OF OHIO,

Cuyahoga County, ss:

Before me Jas. D. Cleveland, a Justice of the Peace in & for said County personally appeared the within named John M. Woolsey as Vice President of the Cleveland, Columbus & Cincinnati Rail Road Company and Flavel W. Bingham, as Mayor of the City of Cleveland, & severally acknowledged the signing and sealing of the within instrument to be their several voluntary act and deed for the purposes therein expressed this 14th day of September, 1849.

JAS. D. CLEVELAND,
Justice of the Peace.

(Endorsed.)

The City of Cleveland to The Clev'd Col. & Cin'ti R. R'd Co.
Deed of Land in Cleveland—Bath St.

Received July 1, 1851, & Recorded July 7, 1851 in Cuyahoga
County Records Vol. 51 pages 187-8-9-90.

JOHN PACKARD,
Dep. Recorder.

Supposed to be property listed July 2, 1851.

A. CLARK, *Auditor.*

Cuyahoga County, Ohio, Title File No. 12 Main Line, Cleveland
Division C. C. C. & St. L. Ry.

And further to maintain the issues on its part, the defendants,
The Lake Shore & Michigan Southern Railway Company
332 offered in evidence Map found on page 59 of Book of Allot-
ments No. 2 of the City of Cleveland, and minutes of the
surveyor, Ahaz Merchant, a copy of which said map with said
minutes thereon is hereto attached, marked Defendants' Exhibit 2
and made a part hereof.

And further to maintain the issues on its part, defendants, The
Lake Shore & Michigan Southern Railway Company, offered in evi-
dence Map in Vol. I of Maps and Profiles of the City of Cleveland,
page 211, a copy of which said map is hereto attached and made a
part hereof and marked Defendants' Exhibit 3.

Also Map on page 213 of said Vol. I of Maps and Profiles, a copy
of which said map is hereto attached and made a part hereof and
marked Defendants' Exhibit 4.

Also Map on page 215 of said Vol. I of Maps and Profiles, a copy
of which said map is hereto attached and marked Defendants' Ex-
hibit 5 and made a part hereof.

And further to maintain the issues on its part, the defendant,
The Lake Shore & Michigan Southern Railway Company, offered
in evidence Act of the Legislature of Ohio, to incorporate the
Cleveland, Painesville & Ashtabula Railroad, found in Vol. 46,
Laws of Ohio, pages 184-5. A true copy of same is as follows,
to-wit:

"An Act to Incorporate the Cleveland, Painesville, and Ashtabula
Railroad Company.

"SEC. 1. Be it enacted by the General Assembly of the State of
Ohio, That John W. Allen, John B. Waring, Charles Hickox, and
Sergeant Currier, of Cuyahoga County; Lord Sterling, O. A. Crary,
E. T. Wilder, Aaron Wilcox, D. R. Paige, P. P. Sanford, Wm. W.
Branch, of Lake County; Asaph Turner, George G. Gillet, Edwin
Harmon, Frederick Carlisle, Robert Lyon, and Zaphno Lake, of
Ashtabula County, are hereby created a body corporate with per-
petual succession, by the name of the Cleveland, Painesville and

Ashtabula Rail Road Company, with authority to construct a railroad from the city of Cleveland, in Cuyahoga county, by the way of Painesville, in Lake County, through Ashtabula county, to some point on the Pennsylvania State line, in said county of Ashtabula, with power to connect with any railroad incorporated by the State of Pennsylvania, and to continue their road into the State of Pennsylvania to any point authorized by the General Assembly of said State.

"SEC. 2. The capital stock of said company may consist of any amount not exceeding fifteen hundred thousand dollars.

"SEC. 3. Said Company shall have all the powers and be subject to all the restrictions and provisions of the act "regulating railroad companies," passed February eleventh, one thousand eight hundred and forty-eight.

JOSEPH S. HAWKINS,

"Speaker of the House of Representatives.

CHARLES B. GODDARD,

"Speaker of the Senate.

"February 18, 1848.

And further to maintain the issues on their part the defendants offered in evidence certified Copy of the Journal Entry of the Court of Common Pleas of Cuyahoga County, showing the Change of Name of the Cleveland, Painesville & Ashtabula Railroad Company to the Lake Shore Railway Company.

A true copy of same is as follows, to-wit:

THE STATE OF OHIO,

Cuyahoga County, ss:

In Court of Common Pleas, May Term, 1868.

In the Matter of the Application of the C., P. & A. R. R. Co. for Change of Name.

On this 17th day of June, A. D., 1868, came the said Cleveland, Painesville and Ashtabula Rail Road Company by their attorney, W. Collins, and it appearing to the Court from the petition, proofs and allegations of said Company that notice of this application has been published pursuant to law, and also that there is good cause shown why the prayer of said petition should be granted; It is therefore ordered, adjudged and decreed that the corporate name of said Railroad Company be changed to the following name, viz: "The Lake Shore Railway Company;" Ordered that said petitioners pay the costs of this proceeding to be taxed.

THE STATE OF OHIO,

Cuyahoga County, ss:

I, Frederick S. Smith, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Journals and

Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing copy is taken and copied from the Journal of the proceedings of the Court of Common Pleas within and for said Cuyahoga County; and that said foregoing copy has been compared by me with the original Journal Entry and that the same is a correct transcript thereof.

In testimony whereof, I hereto subscribe my name officially and affix the Seal of said Court, at the Court House in the City of Cleveland, in said County, this 19th day of June, A. D., 1868.

[SEAL.]

FREDERICK S. SMITH, *Clerk*,
By B. S. COGSWELL,

Deputy Clerk.

Five cent revenue stamp.

334 (*Certificate under Section 906, Revised Statutes of the United States.*)

UNITED STATES OF AMERICA,

State of Ohio,

Office of the Secretary of State:

I, Samuel M. Taylor, Secretary of State of the State of Ohio, and being the officer who under the Constitution and Laws of said State, is duly constituted the keeper of the records of articles of incorporation of all companies incorporated under the laws thereof, and the records of all papers relating to the creation of said incorporated companies, and empowered to authenticate exemplifications of the same, do hereby certify that the annexed instrument is an exemplified copy, carefully compared by me with the original record now in my official custody as Secretary of State, and found to be true and correct, of the Decree of Common Pleas Court of Cuyahoga County changing the Corporate Name of the "Cleveland, Painesville and Ashtabula Rail Road Company," filed in this office on the 22nd day of June, A. D., 1868, and recorded in Volume 5, Page 385, of the Records of Incorporations; that said exemplification is in due form and made by me as the proper officer, and is entitled to have full faith and credit given it in every Court and office within the United States.

In testimony whereof, I have hereunto attached my official signature and the Great Seal of the State of Ohio, at Columbus, this 5th day of October, A. D., 1893.

[Seal of the State of Ohio.]

SAMUEL M. TAYLOR,
Secretary of State.

And further to maintain the issues on their part the defendants offered in evidence copy of the articles of agreement of the consolidation between the Cleveland & Toledo Railroad Company and the Lake Shore Railway Company, bearing date February 11, 1869, filed in the office of the Secretary of State April 6, 1869, and a true copy of same is as follows, to-wit:

Articles of Agreement Made and Entered into This Eleventh Day of February, A. D. 1869, by and between the Cleveland and Toledo Railroad Co. and the Lake Shore Railway Co.

That whereas, the Railroads respectively owned by the above named Companies have been constructed so as to admit the passage of burden, or passenger cars, over them continuously, without break or interruption, from the western terminus of the said Railroad of the said Cleveland and Toledo Company, which is at the City of Toledo, in the State of Ohio, to the eastern terminus of the
335 said railroad of the Lake Shore Company, which is in the City of Erie, in the State of Pennsylvania; and the Directors of the respective Companies have determined that the interests of the respective stockholders of said Companies, and the public interest and convenience will be promoted by the union of said railroads into one, and by the consolidation of the respective stocks of said Companies into one common consolidated Stock.

And whereas, the said Companies are authorized by the laws of Ohio, and especially by the Act of the Legislature of said State, passed March 3d, A. D. 1851, to effect such consolidation, and have by and through their respective Boards of Directors agreed so to do, upon the terms and conditions hereinafter mentioned and contained.

Now therefore, this agreement made by and between the corporations above named, under and by virtue of legal authority so to do, and which is expressly conferred by the above named Act of the Legislature of Ohio, witnesseth: That the said Cleveland and Toledo Railroad Company, and the said Lake Shore Railway Company do agree, each with the other, that the said Companies shall be consolidated into and form one corporation, which shall have for its name and style "The Lake Shore Railway Company."

And in pursuance of the said Act of the Legislature of Ohio, the said parties hereto do hereby prescribe the following terms and conditions of and for the said consolidation, and do respectively agree thereto, and to the mode of carrying the same into effect as herein provided.

Article I. The Directors of said Corporations so consolidated under the name of the "Lake Shore Railway Company," shall be in number, Thirteen.

Article II. The first election of Directors for the "Lake Shore Railway Company" shall be held at the principal office now jointly occupied by the parties hereto, in the City of Cleveland, in the State of Ohio, on the 19th day of March, A. D. 1869, between the hours of two and four P. M. All stockholders in either of the above named Companies entitled to vote at any election of Directors in either of said Companies, shall have the right to vote at the said election, in person or by proxy, and shall be severally entitled to one vote for each and every share of stock held or owned by said stockholder in either of said Companies. The thirteen persons, being legally qualified, receiving the highest number of votes at the said election, shall be the first Directors of the said Lake Shore Railway Company, and

shall hold their office until their successors are elected and qualified according to law.

336 Article III. The capital stock of the said Lake Shore Railway Company shall be fifteen millions of dollars, to be divided into three hundred thousand shares of fifty dollars each; and whereas the shares in the said two Companies were, by and under the provisions of a lease and agreement between the parties hereto, of date October 8th, R. D. 1867, equalized in value, it is hereby agreed that each share in the one Company is and shall be taken to be of equal value with each share in the other Company, and that each and every holder of shares in either of said Companies, shall, after having obtained such increase in the number of his shares as he may be entitled to under the provisions of said lease and agreement, and under the action and authority of the said Company issuing said shares, be entitled to receive, on surrender of his certificate for the shares so held by him, an equal number of shares in said Lake Shore Railway Company; and said Company shall, without delay, issue such certificates on demand of any stockholder.

Article IV. After consolidation herein provided for is perfected, and after said first election, no stockholder in either of the Companies parties hereto shall be permitted to vote at any meeting of the stockholders of said consolidated Company, until they shall have surrendered their certificates of stock in said Company, and received in exchange certificates of stock in the said consolidated Company.

Article V. All and singular the rights, franchises, privileges, real estate, depot grounds, rights of way, road bed, iron rails, rolling stock, money, choses in action, accounts, and property of every description, name and nature belonging to either of said Companies, and the right, title, equity or interest which either may have, present, future or contingent in any property or credit, with all appurtenances, shall, upon the ratification of these articles and the election of the first Board of Directors of the said Lake Shore Railway Company as herein and by law provided for, be held, owned, and controlled by the said Lake Shore Railway Company, its successors and assigns, as fully and completely to all intents and purposes as the said respective parties hereto, do or can now hold, own, use or control the same, and no further conveyance or assurance shall be required for the full and complete vesting thereof in the said Lake Shore Railway Company.

Article VI. All just debts, guarantees, liabilities and obligations existing against either of the said Companies, parties hereto at the time of the taking effect of this consolidation, shall be and are hereby assumed, and the same shall be provided for, paid and discharged by the said consolidated Company, and all contracts and
337 agreements existing between either of the parties hereto, and other Companies, or with any person or persons, shall be carried out and performed by the said consolidated Company.

Article VII. All books, vouchers, records, instruments of title, cash, evidences of debt, contracts and other documents, pertaining to the business or property of the said Companies parties hereto,

shall without delay be delivered to the proper officers of the consolidated Company. And the said books, records and papers shall be deemed and taken, as far as necessary, as the records and books of said consolidated Company; and said books, records vouchers and papers shall be subject to the proper examination and inspection of all persons interested therein, who shall have the same access thereto as if the same had remained in the offices of the original Companies.

Article VIII. It is agreed that these articles of consolidation shall be submitted to the stockholders of each of said Companies, parties hereto, at a meeting thereof called separately for the purpose of taking the same into consideration, and ratifying or rejecting the same. Due notice of the time and place of such meeting, and the object thereof, shall be given as provided by law. The time of such meeting of the stockholders of the Cleveland and Toledo Railroad Company, shall be on the 19th day of March, A. D. 1869, between the hours of 10 A. M. and 2 P. M.; and the place, the office of the Lake Shore Railway Company, in the City of Cleveland. The time of such meeting of the stockholders of the Lake Shore Railway Company shall be on the 19th day of March, A. D. 1869, between the hours of 10 A. M. and 2 P. M.; and the place, the office of the Company in the City of Cleveland.

Article IX. All elections for Directors of said consolidated Company, after the first election of Directors herein provided for, shall take place at such time and place and in such manner as may be prescribed by the By-Laws of the Board of Directors of the consolidated Company.

In witness whereof, said Cleveland and Toledo, and Lake Shore Railway Companies, have caused their respective corporate seals to be hereunto affixed, and these presents to be subscribed by
338 their Presidents and Secretaries, in the City of Cleveland,
this eleventh day of February, A. D. 1869.

[SEAL.]

CLEVELAND & TOLEDO R. RD. CO.,
By GEO. B. ELY, *President*.

Attest:

GEO. B. ELY, *Sec'y*.

[SEAL.]

LAKE SHORE RAILWAY COMPANY,
By J. H. DEVEREUX, *V. President*.

Attest:

WM. CROWELL, *Sec'y*.

(Int. Revenue Stamp. 20c.)

OFFICE OF THE CLEVELAND AND TOLEDO RAILROAD COMPANY,
CLEVELAND, April 1st, 1869.

I hereby certify that the foregoing agreement hereto attached entered into by and between the Board of Directors of this Company with the Board of Directors of the Lake Shore Railway Company, both corporations in the State of Ohio, was on the 19th day of

March, A. D. 1869, after more than thirty days' notice (a copy of which is hereunto attached) given to each of the stockholders of this company whose places of residence were known, and deposited in the Post Office at Cleveland, Ohio, and published in one of the newspapers in the City of Cleveland, in which city said corporation has its principal office of business, in the manner required by the statute of Ohio, in such case made and provided, was on said day at the meeting of the stockholders, called under said notice, sanctioned by said stockholders by the vote of more than two-thirds of all the stockholders of said corporation, present at said meeting by proxy or in person. That the whole number of shares so represented was Ninety-two thousand two hundred and sixty-seven, (92,267) of which the whole number voted in favor of sanctioning the same and none against.

And that the foregoing is an accurate duplicate of the said agreement, and that the same was executed by the President of this company, under its corporate seal, and by virtue of a resolution of the

Board of Directors authorizing the same.

339 In witness whereof the secretary of said corporation has hereunto set his hand and the seal of said company, on the day and year aforesaid.

[SEAL.]

WM. CROWELL,
Secretary C. & T. R. R.

(5c. Int. revenue Stamp.)

Notice.

OFFICE OF THE CLEVELAND AND TOLEDO RAILROAD COMPANY,
CLEVELAND, February 11, 1869.

At a meeting of the Board of Directors this day, it was unanimously resolved that the Contract for Consolidating the capital stock of this company with that of the Lake Shore Railway Company be approved. And it was ordered that a special meeting of the stockholders to ratify said contract of consolidation be held at the office of the company, in Cleveland, on Friday, the 19th day of March, 1869, between the hours of 10 A. M. and 2 P. M.

It was also ordered, that in case of the ratification of said contract, a meeting of the stockholders shall be held at the same place, between the hours of 2 and 4 P. M. of said 19th day of March aforesaid, for the purpose of electing Directors of such consolidated company.

The transfer books of the company will be closed on the 20th day of February, 1869, and opened on the 20th day of March, 1869.

In case of your inability to attend the meeting in person, you will please sign the annexed power of attorney, and forward the same Geo. B. Ely, President, with instructions to vote for or against said proposition, as you may see fit.

WM. CROWELL, *Secretary.*

OFFICE OF THE LAKE SHORE RAILWAY COMPANY,
CLEVELAND, April 1st, 1869.

I hereby certify that the foregoing agreement hereunto attached, entered into by and between the Board of Directors of this company with the Board of Directors of the Cleveland and Toledo Rail Road Company, both corporations in the State of Ohio, was on the 19th day of March, A. D. 1869, after more than thirty days' notice (a copy of which is hereunto attached) given to each of the stockholders of this company, whose places of residence were known, and deposited in the Post Office at Cleveland, Ohio, and published in one of the newspapers in the City of Cleveland, in which city said corporation has its principal office of business, in the manner required by the statute of Ohio in such case made and provided, was on said day at the meeting of the stockholders called under 340 said notice, sanctioned by said stockholders by the vote of more than two thirds of all the stockholders of said corporation present at said meeting by proxy or in person. That the whole number of shares so represented was One Hundred Thirty-two thousand and Ninety-two shares (132,092), of which 131,438 shares voted in favor of sanctioning the same, and only 654 shares voted against the same. And that the foregoing is an accurate duplicate of the said agreement, and that the same was executed by the President of this company, under its corporate seal and by virtue of a resolution of the Directors authorizing the same.

In witness whereof, the Secretary of said corporation has hereto set his hand and the seal of said company, on the day and year aforesaid.

[SEAL.]

GEO. B. ELY,
Sec'y Lake Shore Ry. Company.

(5c. Int. Revenue Stamp.)

STATE OF OHIO,
Cuyahoga County, ss:

Before me a Notary Public appeared the Lake Shore Railway Company by Geo. B. Ely, its Secretary, who acknowledged the signing and sealing of the foregoing instrument.

[SEAL.]

WM. CROWELL,
Notary Public.

Notice.

OFFICE OF THE LAKE SHORE RAILWAY COMPANY,
CLEVELAND, February 11th, 1869.

At a meeting of the Board of Directors this day, it was unanimously resolved, that the contract for consolidating the capital stock of this company with that of the Cleveland and Toledo Rail Road Company be approved. And it was ordered that a special meeting of the stockholders to ratify said contract of consolidation be held

at the office of the company in Cleveland, on Friday, the 19th day of March, 1869, between the hours of 10 A. M. and 2 P. M.

It was also ordered, that in case of the ratification of said contract, a meeting of the stockholders shall be held at the same place, between the hours of 2 and 4 P. M. of said 19th day of March aforesaid, for the purpose of electing Directors of such consolidated company.

The transfer books of the company will be closed on the 20th day of February, 1869, and opened on the 20th day of March, 1869.

In case of your inability to attend the meeting in person, you will please sign the annexed power of attorney, and forward the
341 same to me, with instructions to vote for or against said proposition, as you may see fit.

GEO. B. ELY, *Secretary.*

THE STATE OF OHIO,

Office of Secretary of State:

I, Isaac R. Sherwood, Secretary of State of the State of Ohio, do hereby certify that the foregoing is a true and correct copy of the articles of consolidation by and between "The Cleveland and Toledo Railroad Company" and "The Lake Shore Railway Company" forming "The Lake Shore Railway Company," filed in this office April 6th, A. D. 1869.

In testimony whereof I have hereunto subscribed my name and affixed the Great Seal of the State of Ohio, at Columbus, O., this 6th day of April, A. D. 1869.

[Seal of the State of Ohio.]

ISAAC R. SHERWOOD,

Secretary of State.

And further to maintain the issues on its part, the defendant, The Lake Shore & Michigan Southern Railway Company, offered in evidence certified copy of the Articles of Consolidation of The Lake Shore Railway Co. and The Michigan Southern and Northern Indiana Railroad Company, forming the Lake Shore and Michigan Southern Railway Company, filed with the Secretary of State May 27th, 1869.

The COURT: What is the purpose of that?

Mr. FOOTE: Simply to show the succession of title.

A true copy of said Articles of Consolidation is as follows, to-wit:

Articles of agreement, made and entered into this 6th day of April, A. D. 1869, by and between the Lake Shore Railway Company, party of the first part, and the Michigan Southern and Northern Indiana Railroad Company, party of the second part.

Whereas, the said first party owns a line of railroad, extending from the City of Erie, in the State of Pennsylvania, to the City of Toledo in the State of Ohio, and the said second party owns lines of railroad extending from Chicago, in the State of Illinois, to said City of Toledo, with branches, which railroads constitute a continuous line of railroad from Erie to Chicago.

And whereas, said companies are authorized by law to consolidate and become one corporation, and it is believed that such a consolidation will be beneficial, both to the stockholders of said two companies, and to the public.

Now, therefore, this agreement witnesseth:

That the said Lake Shore Railway Company, and the said Michigan Southern and Northern Indiana Railroad Company, do agree, each with the other, that the said companies shall be consolidated into and form one corporation, which shall have for its name and style The "Lake Shore and Michigan Southern Railway Company," and do prescribe the following terms and conditions for the said consolidation and the mode of carrying the same into effect.

Article I. The directors of said corporations so consolidated under the name of the Lake Shore and Michigan Southern Railway Company, shall be in number thirteen, and the officers thereof shall consist of a President, and one or more Vice Presidents, a Treasurer, and Secretary, and other necessary officers, all of whom shall be residents of the United States.

(5c. Int. Rev. Stamp.)

The authorized capital stock of said consolidated company shall be Thirty Millions of Dollars. The amount of each share shall be One Hundred Dollars. The number of shares shall be Three Hundred Thousand. The holder of shares in either of said companies, shall be entitled to receive, on surrender of his certificate for the shares so held by him, a certificate for an equal amount of stock in shares at par in said consolidated company; and said company shall, without delay, issue such certificate on demand of any such stockholder. Certificates for half shares may be issued to the holder, who shall be entitled to receive dividends and vote on the same. The shares of the companies consolidated, shall be deemed such in the new corporation, entitling the holder thereof to vote and receive dividends according to their par values, until the consolidated company shall be ready to issue new shares therefor, and shall have given thirty days' notice thereof in a daily newspaper, published at Buffalo, Cleveland, Chicago and New York; and the officers and employes of the companies so consolidated shall continue to be officers and employes of said consolidated company until their successors are duly elected or appointed by the proper authorities of said new corporation.

(5c. Int. Rev. Stamp.)

Article II. It is stipulated by the first party, that the whole amount of its capital stock, certificates for the shares of which are now outstanding; or in existence, amount at par to fifteen millions of
343 dollars, and no more. It is stipulated by the second party, that the whole amount of its capital stock, certificates for the shares of which are now outstanding or in existence, amount at par

to twelve millions one hundred and twenty-five thousand six hundred dollars, and no more.

It is stipulated by the first party, that the amount of its indebtedness in bonds issued or outstanding, does not exceed the sum of six millions six hundred thousand dollars; and by the second party, that the amount of its indebtedness in bonds, issued or outstanding, does not exceed the sum of eight millions eight hundred and seventy-six thousand five hundred and eighty dollars; and by each party with the other, that the amount of its indebtedness and liabilities of every character, so far as known to its President, Vice President or Treasurer, is now fully disclosed and represented to the Directors of the other party.

(5c. Int. Rev. Stamp.)

Article III. All and singular the rights, franchises, privileges, real estate, depot grounds, railroads held by lease, rights of way, road bed, branches, iron rails, rolling stock, money, choses in action, accounts, equities, stocks and property of every description, name and nature, belonging to either of said company, and the right, title, equity or interest which either may have, present, future or contingent, in any property or credit, with all appurtenances shall, in whatever state the same may be situate, upon the ratification of these articles and the election of the first board of directors of the said Lake Shore and Michigan Southern Railway Company, as herein by law provided for, be held, owned and controlled by the said Lake Shore and Michigan Southern Railway Company, its successors and assigns, as fully and completely to all intents and purposes, as the said respective parties hereto do or can now hold, own, use, or control the same, and no further conveyance or assurance shall be required for the full and complete vesting thereof in the said Lake Shore and Michigan Southern Railway Company.

(5c. Int. Rev. Stamp.)

Article IV. All just debts guarantees, liabilities, and obligations existing against either of the said companies parties hereto, at the time of the taking effect of this consolidation, shall be, and are hereby assumed, and the same shall be provided for, paid and discharged by the said consolidated company, and all contracts and agreement- existing between either of the parties hereto, and other companies, or with any person or persons, shall be carried out and performed by the said consolidated company.

344 Article V. All books, vouchers, records, instruments of title, cash, evidences of debt, contracts, and documents pertaining to the business or property of the said companies, parties hereto, shall, without delay, be delivered to the proper officers of the consolidated company; and the said books, records, and papers, shall be deemed and taken, as far as necessary, as the records and books of said consolidated company, and said books, records,

vouchers and papers shall be subject to the proper examination and inspection of all persons interested therein.

(5c. Int. Rev. Stamp.)

Article VI. The first election of directors of said consolidated company, shall be held in the said city of Cleveland on the second day of June, A. D. 1869. All subsequent elections shall take place at such time, place, and in such manner as may be prescribed by the By-Laws of the board of Directors of the consolidated company.

In witness whereof, The said corporations have caused these presents to be signed by their respective Presidents, and sealed by their respective corporate seals, this sixth day of April, A. D. 1869.

THE LAKE SHORE RAILWAY COMPANY,
By J. H. DEVEREUX, *President*.

Attest:

[Seal L. S. Ry. Co.]

GEO. B. ELY, *Secretary*.

(5c. Internal Revenue Stamp.)

THE MICHIGAN SOUTHERN AND
NORTHERN INDIANA RAILROAD
COMPANY.

By E. B. PHILLIPS, *President*.

Attest:

[Seal M. S. & N. I. R. R. Co.]

D. P. BARRHYDT, *Secr.*

OFFICE OF THE MICHIGAN SOUTHERN AND
NORTHERN INDIANA R. R. Co.,
CHICAGO, *May 10th*, 1869.

I hereby certify that the foregoing agreement, made and entered into by and between the board of directors of the Michigan Southern and Northern Indiana Railroad Company, a corporation of the State of Indiana, and the board of directors of the Lake Shore Railway Company, a railroad company in the State of Ohio, and organized under its special laws, was submitted to the stockholders of this company at a meeting thereof, called separately, for the purpose of taking the same into consideration, at the principal office of this company in the city of Chicago, Illinois, which meeting
345 was held on the 8th day of May, A. D. 1869, in pursuance of the notice, a copy — which is herewith attached.

That a printed copy of said notice was sent, as required by the laws of Ohio, to each of the persons in whose hands the capital stock of said company stood at the date thereof, and was also duly published

in the Cleveland Herald, newspaper printed and published in the city of Cleveland.

I further certify that on such submission, the holders of Ninety-one Thousand Three Hundred and Eighty-six of the shares of the capital stock of said company, voted by ballot in favor of the adoption of said agreement, said vote being more than two-thirds of all the votes of all the stockholders of said company, and no votes were cast in favor of the rejection of the same.

I do further certify that the agreement hereto attached is a correct copy of the agreement of consolidation, which was entered into between said two companies.

D. P. BARHYDT,

Sec'y Mich. So. & No. Indiana R. R. Co.

OFFICE OF THE MICHIGAN SOUTHERN AND
NORTHERN INDIANA RAILROAD COMPANY,

April 6th, 1869.

To ———:

You are hereby notified that a meeting of the stockholders will be held at the office of the company, in Chicago, in the State of Illinois, on the 8th day of May next, for the purpose of taking into consideration, and adopting, or rejecting an agreement for the consolidation of this company with the Lake Shore Railway Company, owning a line of railroad extending from the City of Toledo to Erie in the State of Pennsylvania, which was entered into by the respective directors of said companies on the 6th day of April, 1869; and in the event of its adoption, to prescribe the manner and fix the day and place for holding the election of the directors and officers provided for in said agreement of consolidation.

D. P. BARHYDT, *Secretary.*

OFFICE OF THE LAKE SHORE RAILWAY COMPANY,

CLEVELAND, May 10th, 1869.

I hereby certify that the foregoing agreement, made and entered into by and between the board of directors of the Lake Shore Railway Company, a railroad company in the State of Ohio and organized under its special laws, and the board of directors of the Michigan Southern and Northern Indiana Railroad Company, a corporation of the State of Indiana, was submitted to the stockholders of this
346 company, at a meeting thereof, called separately, for the purpose of taking the same into consideration, at the principal office of this company in the City of Cleveland, Ohio; which meeting was held on the 8th day of May, A. D. 1869, in pursuance of the notice, a copy of which is herewith attached. That a printed copy of said notice was sent, as required by the laws of Ohio, to each of the persons in whose hands the capital stock of said company stood at the date thereof; and was also duly published in the Cleveland Herald, a newspaper printed and published in said City of Cleveland.

I further certify that on such submission, the holders of Two Hundred Thirty-eight Thousand Three Hundred and Eighty-three (238,383) shares of the capital stock of said company voted by bal-

lot in favor of the adoption of said agreement, said vote being more than two-thirds of all the votes of all the stockholders of said company, and no votes were cast in favor of the rejection of the same.

I do further certify that the agreement hereto attached is a correct copy of the agreement of consolidation, which was entered into between said two companies.

GEO. B. ELY,
Sec'y Lake Shore Ry. Company.

OFFICE OF THE LAKE SHORE RAILWAY COMPANY,
CLEVELAND, O., *April 6th, 1869.*

You are hereby notified that a meeting of the stockholders will be held at the office of the company, in Cleveland, in the State of Ohio, on the 8th day of May next, 10 o'clock A. M., for the purpose of taking into consideration, and adopting or rejecting an agreement for the consolidation of this company with the Michigan Southern and Northern Indiana Railroad Company, owning a line of railroad extending from the city of Toledo, Ohio, to Chicago, in the State of Illinois, which was entered into by the respective boards of directors of said companies, on the 6th day of April, 1869, and in the event of its adoption to prescribe the manner, and fix the day and place for holding the election of the directors and officers, provided for in said agreement of consolidation.

The transfer books will be closed on the 24th day of April, 1869, at 3 o'clock P. M., and re-opened on the 10th day of May next.

GEO. B. ELY, *Secretary.*

UNITED STATES OF AMERICA,

Ohio,

Office of Secretary of State:

I, Isaac R. Sherwood, Secretary of State of the State of Ohio, do hereby certify that the foregoing is a true copy of the
347 Articles of Consolidation, entered into by and between the "Lake Shore Railway Company," and the "Michigan Southern and Northern Indiana Railroad Company," forming the "Lake Shore and Michigan Southern Railway Company," filed in this office May 27th, A. D. 1869.

In testimony whereof, I have hereunto subscribed my name and affixed the Great Seal of the State of Ohio, at Columbus, this 28th day of May, A. D. 1869.

[Seal of the State of Ohio.]

ISAAC R. SHERWOOD,
Secretary of State.

(Endorsed.)

Articles of Consolidation of the Lake Shore Railway Company and the Michigan Southern and Northern Indiana Railroad Company forming the Lake Shore and Michigan Southern Railway Company.

(Copy.)

Filed May 27th, 1869.

Ohio.

And further to maintain the issues on their part, all the defendants offered in evidence the Act incorporating the City of Cleveland, found in Vol. 34, Laws of Ohio, pages 271-284, of which the following is a true copy, to-wit:

An Act to Incorporate the City of Cleveland.

"SEC. 1. Be it enacted by the State of Ohio, That so much of the County of Cuyahoga as is contained within the following bounds, to-wit: beginning at low water mark, on the shore of Lake Erie, at the most north-easterly corner of Cleveland ten acre lot, number one hundred and thirty-nine, and running thence on the dividing line between lots number one hundred and thirty-nine and one hundred and forty, numbers one hundred and seven and one hundred and eight, numbers eighty and eighty-one, numbers fifty-five and fifty-six, numbers thirty-one and thirty-two, and numbers six and seven of the ten acre lots, to the south line of ten acre lots; thence on the south line of the ten acre lots, to the Cuyahoga river; thence to the centre of the Cuyahoga river; thence down the same to the extreme point of the west pier of the harbor; thence to the township line between Brooklyn and Cleveland; thence on that line northwardly to the county line; thence eastwardly with said line to a point due north of the

place of beginning; thence south to the place of beginning; shall be and is hereby declared to be a city; and the inhabitants thereof are created a body corporate and politic, by the name and style of the City of Cleveland; and by that name shall be capable of contracting and being contracted with, of suing and being sued, pleading and being impleaded, answering and being answered unto, in all courts and places, and in all matters whatsoever; with power of purchasing, receiving, holding, occupying and conveying real and personal estate; and may use a corporate seal, and change the same at pleasure; and shall be competent to have and exercise all the rights and privileges, and be subject to all the duties and obligations appertaining to a municipal corporation.

"SEC. 2. That the government of said city, and the exercise of its corporate powers, and the management of its fiscal, prudential and municipal concerns shall be vested in a mayor and council, which council shall consist of three members from each ward, actually residing therein, and as many aldermen as there may be wards, to be chosen from the city at large, no two of which shall reside in any one ward and shall be denominated the city council; and also such other officers as are hereinafter mentioned and provided for.

"SEC. 3. That the said city, until the city council see fit to increase, alter or change the same, be divided into three wards, in the manner following, to-wit: The first ward shall comprise all the territory lying easterly of the centre of the Cuyahoga river, and southerly to the centre of Superior lane and Superior Street to Ontario Street, and of a line thence to the centre of Euclid street, and of said last mentioned centre; the second ward shall comprise all the territory not included in the first ward, lying easterly of the centre of Seneca street; the third ward shall include all the territory westerly of the centre of

Seneca street, easterly of the westerly boundary of the city, and northerly of the centre of Superior Street and Superior lane.

"SEC. 4. That the mayor, alderman, councilmen, marshal and treasurer of said city shall be elected by the qualified voters thereof, at the annual election of said city, to be held on the first Monday in March, and shall hold their respective offices for one year, and until their successors are chosen and qualified; it shall be the duty of the mayor to keep the seal of said city, sign all commissions, licenses and permits, which may be granted by the city council; to take

349 care that the laws of the State and the ordinances of the city council be faithfully executed; to exercise a constant supervision and control over the conduct of all subordinate officers, and to receive and to examine into all complaints against them, for neglect of duty; to preside at the meetings of the city council, when other duties shall permit; to recommend to city council such measures as he may deem expedient; to expedite all such as shall be resolved upon by them; and in general to maintain the peace and good order and advance the prosperity of the city; as a judicial officer, he shall have exclusive original jurisdiction of all cases, for the violation of any ordinance of said city and in criminal cases, he is hereby vested with powers co-equal with justices of the peace within the County of Cuyahoga, and shall be entitled to like fees; and he shall award all such proceeds, and issue all such writs as may be necessary to enforce the due administration of right and justice throughout the city, and for the lawful exercise of his jurisdiction, agreeably to the usages and principles of law; and when presiding at the meetings of the city council, he shall have a casting vote, when the votes of the members are equal.

"SEC. 5. The members of the city council shall, on the second Monday after each annual election, assemble at the council chamber or some other suitable place in said city, and elect from their own body a president, to preside at their meetings in the absence of the mayor, and a majority of all the members shall be a quorum for the transaction of business; the city council shall determine the rules of their proceedings and keep a journal thereof, which shall be open to the inspection of every citizen; may compel the attendance of absent members, under such penalties and in such manner as they may think fit to prescribe; and shall prescribe the place and fix the time of holding their meetings, which shall at all times be open to the public; and said council may adopt any by-laws for their own government, not inconsistent with the provisions of this act, and in case of the absence or inability of both the mayor and president of the city council, the senior alderman present, shall, for the time being, discharge the duties of either mayor or president of the city council, as the cases may require.

"SEC. 6. That the city council shall have the custody and control of all the real and personal estate, and other corporate property belonging to said city, its public buildings, rights and interests; and may make such orders, regulations and provisions, for the maintenance and preservation thereof, as they shall deem expedient; it shall be their duty to regulate the police of the city,

preserve the peace, prevent riots, disturbances and disorderly assemblages; they shall have authority to appoint watchmen, and prescribe their powers and duties, and to prescribe fines and penalties for their delinquencies; to restrain vagrants or other persons soliciting alms or subscriptions; to suppress and restrain disorderly and gaming houses, billiard tables, and other devices and instruments of gaming; to prevent the vending of liquors to be drank on any canal boat, or other place not duly licensed; to prevent and punish immoderate driving in any street or other highway of said city; to abate and remove nuisances; to prohibit bathing in any public water within the city; to prevent the encumbering of any streets or highways of the city, in any manner whatever; to provide for clearing the Cuyahoga river of driftwood and other obstructions, and to prevent encroachments of any kind thereon, within said city; to regulate the keeping and carrying of gunpowder and other combustible materials; to establish, alter and regulate markets, to regulate the vending of meats, vegetables and fruits, pickled and other fish and the time and place of selling the same; weighing and selling hay, measuring coal, cordwood and other fuel, and lumber, and shingles; weighing and measuring salt, lime, fish, iron, and any other commodity exposed, or intended to be exposed, for sale in said city; to provide for, and regulate the gaging of all casks, and other vessels containing liquids, sold, or intended to be sold in said city; to regulate cartmen and cartage, porters, hacking carriages and their drivers, and limit their fees and compensation; and to regulate pawnbrokers; to light the streets of the city; to regulate or restrain the running at large of horses, cattle, dogs and swine; and to establish and regulate one or more pounds; and to impose a tax on the owners of dogs; to establish and preserve public wells and cisterns; and to prevent the waste of water; to regulate the burial of the dead, and to compel the keeping and return of bills of mortality; to regulate all taverns and porter houses, and place where spirituous liquors are bought and sold by less quantity than one quart; all houses or places of public entertainment; all exhibitions and public shows; with exclusive power to grant or refuse licenses thereto, or to revoke the same, and to exact such sum or sums therefor, as they may deem expedient; to establish and settle

351 the boundaries of all streets or highways of all kinds within the city, and prevent or remove encroachments thereon; to prescribe the bonds and securities to be given by the officers of the city, for the discharge of their duties, where no provision is otherwise made by law; and further to have power and authority, and it is hereby made their duty, to make and publish from time to time all such laws and ordinances, as to them may seem necessary to suppress vice, provide for the safety, preserve the health, promote the prosperity, improve the order, comfort and convenience of said city and its inhabitants, and to benefit the trade and commerce thereof, as are not repugnant to the general laws of the State; and likewise they shall have power to regulate wharves and the mooring of vessels in the harbor; to appoint a harbor master, with the usual powers, and to prevent fishing lights; and for the violation of any ordinance by them made by the authority of this act, the

said city council may prescribe any penalty not exceeding one hundred dollars and provide for the prosecution, recovery and collection thereof, or for the imprisonment of the offender, in case of the non-payment of such penalty.

SEC. 7. That for the purpose of guarding against the calamities of fire, the city council may from time to time, by ordinance, designate such portions and parts of the city as they shall deem proper, within which no buildings of wood be erected; and may regulate and direct the erection of buildings within such portions and parts, the size and materials, and the size of the chimneys therein; and every person who shall violate such ordinance or regulation shall forfeit to said city the sum of one hundred dollars; and every building erected contrary to such ordinance, is hereby declared to be a common nuisance, and may be abated and removed as such by the city council; and the city council may by ordinance require the owners and occupants of houses and other buildings to have scuttles on the roofs of such houses and buildings, and stairs or ladders leading to the same; and whenever any penalty shall have been recovered against the owner or occupant of any house or other building, for not complying with such ordinance, the city council may, at the expiration of twenty days after such recovery, cause such scuttles and stairs or ladders to be constructed, and may recover the expense thereof, with ten per cent. in addition, of the owner or occupant, whose duty it was to comply with such ordinance; and for the purpose of arresting the progress of any fire, the mayor 352 and council, or any three members thereof, may direct any building or buildings to be torn down, removed or blown up with gun powder.

"SEC. 8. That the city council shall have power, on petition, signed by at least twelve freeholders of said city and notice given for six consecutive weeks in one or more of the newspapers of said city, to lay out and establish, vacate, change or alter, any street or streets, alley or alleys, lane or lanes in said city; and if any person shall claim damages by reason of the laying out or vacating, changing or altering thereof, and shall file his notice of such claim, in writing, with the city clerk, within thirty days after the order for laying out, vacating, changing or altering, shall have been published, which said order said city council shall cause to be published in some newspaper in said city, for four weeks in succession; the city council shall cause the damage, if any, over and above the benefit accruing thereby to such claimant to be assessed by the oaths of three disinterested judicious freeholders of said city, by them appointed for that purpose; and the amount so assessed, shall be paid within three months after the return of such assessment, either by the petitioners or out of the city treasury, as said council shall determine; or in default thereof, the order for laying out, vacating, changing or altering, shall be null and void; the city council shall have power to cause all the streets, highways, commons and market places of said city to be kept in repair, and may cause the same to be graded, paved or otherwise improved, as the interest of said city may seem to require; and shall have exclusive

power of appointing supervisors and officers of streets and other highways within said city, and prescribing their several duties: and the city council shall cause the public streets, roads, lanes, alleys and highways, and the public squares, and other public grounds that now exist within the limits of said city, to be, by the surveyor of the county of Cuyahoga, or some other competent surveyor, to be surveyed, described and permanently marked, and a plat thereof recorded by the city clerk, in a book to be provided for that purpose in which book shall also be recorded a plat of any new street which may hereafter be established by said council, under the provisions of this act; and also of any change or alterations in any of the streets or highways of the city; and such survey and record shall be thereafter conclusive evidence of the position and limits of such street, lane, alley, highway, square or public ground, subject, how-

ever, to such alterations as may be made therein, agreeably
353 to the provisions of this act; all persons residing within said city, who by law are liable to work on the roads, shall perform such work under the direction of the supervisors, to be appointed by the city council, and shall be liable for delinquencies in the same manner, and all fines and forfeitures incurred for delinquencies, shall be collected in the manner pointed out by the laws of this State regulating roads and highways; and when collected, shall be paid over to the city treasurer, to be expended as other road taxes are; and the road tax levied by law on property within said city shall be collected in money by the treasurer of Cuyahoga County; and when collected shall be by him paid over to the city treasurer; and which shall be expended in the improvement of the roads and streets of said city under the direction of the city council.

"Sec. 9. That the city council shall have power to levy a special tax to defray the expense of grading, paving, or otherwise improving any road, street, alley, lane, square, market place or common within said city, by a discriminating assessment upon the land and ground bounding and abutting on such road, street, alley, lane, market place, square or common or near thereto, in proportion to the benefit accruing therefrom to such land or ground; and the city council shall appoint a committee of three disinterested judicious freeholders of said city to estimate the cost of any such projected improvement, and to assess the expense on the land and ground as aforesaid; and it shall be the duty of the city council to provide by ordinance for the correction and equalization of such assessment; and the city council shall give notice in one or more of the newspapers published in said city for six consecutive weeks, of the improvement to be made, in order that any one, damaged by reason of such improvement, may file his claim in writing in the office of the city clerk, within ten days of the expiration of the said six weeks' notice; and the said committee shall assess the damages, if any, of such claimants, and shall add the same to the costs of the improvement as a part of the expense thereof to be assessed as aforesaid; and said committee, within twelve days after the time shall have expired for filing claims for damages (unless for good cause the council shall grant them further time) shall make return to the

office of the city clerk, setting forth the ultimate cost of such projected improvement, including the damages awarded by them to the claimants, together with the names of such claimants and
354 ground of claim, with the amount awarded them severally set opposite their respective names; and also a brief description of the lands and grounds upon which they shall have assessed the expense of the improvement, with the names of the owners or persons liable to pay the assessment respectively annexed, and the amount thereon assessed, set opposite their respective names; and if the name of the person owning, or liable for the tax, is unknown, the fact shall be stated by writing "unknown owner," in place of the name; and the city council, if they order and direct the improvement to be made, shall direct the city clerk, whose duty it shall be to annex a duplicate of taxes, so assessed, to the annual assessment roll hereinafter specified, and to deliver it therewith, on or before the first Monday in July following, to the city solicitor, to be by him collected at the same time and the same manner as the annual taxes, and the proceedings of said collector shall in all respects be the same as in the collection of the annual taxes of said city, and he shall in like manner pay the same into the city treasury; and in case of any tax being returned unpaid and delinquent, the proceedings shall in all respects be the same as in cases of delinquency in the payment of the annual taxes, with the additional of like interest and penalty; and when the improvements so ordered shall be completed, each claimant shall be entitled to receive from the city treasury the amount of damages so, by the return of said committee, awarded him.

"Sec. 10. That the city council shall appoint a city clerk and any other agents or officers necessary for the interest of said city, not herein provided for, and prescribe the duties and compensation of the same, and to remove the same at pleasure; and when the office of any person appointed under the provisions of this act shall become vacant, the city council shall fill such vacancy; and the person appointed to fill such vacancy shall continue in office the remainder of the term of his predecessor; and when the office of any person elected under the provisions of this act by the qualified voters of the city or any ward thereof, shall become vacant, the mayor, by order of the council, shall issue an order for a special election to fill such vacancy; and the person elected shall continue in office during the remainder of the term of his predecessor; and in case of vacancy in the office of the mayor, the president of the city council shall give notice for holding a special election to fill such
355 vacancy, and until the same is filled shall have power and authority to do and perform all the duties appertaining to the office of mayor; and in case of the absence or inability at any time, of the mayor, he shall have like power and authority; and all the officers elected or appointed under the provisions of this act, shall, before entering upon the duties of their respective offices, take an oath or affirmation, faithfully and impartially to perform the several duties of the office to which such person is respectively elected or appointed; and when required shall give bond with good and suffi-

cient security, to said city, in such sum or sums, and with such conditions, thereto, as the city council may from time to time determine; and in all cases not in this act provided for, shall receive such fees and compensation for their services, and be liable to such fines, penalties and forfeitures, for negligence, carelessness, misconduct in office, and positive violations of duty, as the said city council shall by ordinance order and determine; and the city council may grant to the mayor such compensation as shall be approved by the concurring vote of two-thirds of all the members, and to members of their own body such sum not exceeding one dollar per day to each member, for his attendance at any regular or special meeting of the board, as by a like vote shall be approved; and in all cases when a vacancy shall happen in the office of any officer elected by the provisions of this act, the city council shall, by appointment, fill such vacancy; and the person so appointed shall hold such office until a person shall be elected and qualified to execute the duties thereof.

"Sec. 11. That it shall be the duty of the marshal to execute and return all writs and process, to him directed by the mayor; and when necessary in criminal cases, or for a violation of any ordinance of said city, he may serve the same in any part of Cuyahoga County; it shall be his duty to suppress all riots, disturbances and breaches of the peace; to apprehend all disorderly persons in said city, and to pursue and arrest any person fleeing from justice in any part of the State of Ohio; to apprehend any person in the act of committing an offense against the laws of the State, or ordinances of the city, and forthwith to bring such person or persons before competent authority, for examination; to do and perform all such duties as may lawfully be enjoined on him by the ordinances of said city; and he shall have power to appoint one or more deputies, to be approved by the city council, but for whose official acts he shall be responsible, and of whom he may require bail for the faithful performance of their duties.

356 "Sec. 12. That the treasurer of said city shall perform such duties, and exercise such powers, as may be lawfully required of him by the ordinances of said city; all monies raised, received, recovered and collected, by means of any tax, license, penalty, fine, forfeiture or otherwise, under the authority of this act, or which may belong to said city, shall be paid into the city treasury, and shall not be drawn therefrom except by a written order, under the authority of the city council, specifying the object of the appropriation; and it shall be the duty of the city council to settle all claims and demands against said city, and publish accounts of the receipts and expenditures of said city, annually for public information.

"Sec. 13. That the city council shall, when the public good may require it, erect a city prison, and regulate the police and internal government thereof; may authorize solitary confinement, or hard labor therein, for a violation of any of the ordinances of said city, punishable by imprisonment; and until such prison is prepared for the reception of prisoners, the said city shall be allowed the use of the jail of Cuyahoga county, for the confinement of all persons convicted by the mayor, and sentenced under any of the laws of this

State, or ordinances of said city; and all persons so imprisoned, shall be under the charge of the sheriff of said county, who shall receive and discharge such prisoners in and from jail, in such manner as shall be prescribed by the ordinances of said city, or otherwise by due course of law; the city council shall also erect an almshouse, when the public good may require, and such other buildings as may be necessary for the convenience of the city.

"SEC. 14. That the city council shall have power to borrow money for the discharge and liquidation of any debt of the city, either present or prospective, and to provide for the redemption of any loan by them made, and the payment of the interest thereon; and to pledge the revenues and property of the city therefor, in such manner, and upon such terms and conditions as said council may by ordinance prescribe; and any ordinance for obtaining a loan of money, shall be considered and adopted by a vote of said city council, two-thirds of all members concurring, by yeas and nays, and be entered at large on their journal; the proceedings shall then be postponed for at least two weeks, to a subsequent meeting of said council, and shall then be passed by a like majority concurring, and the vote thereon shall be entered as aforesaid.

357 "SEC. 15. That for the discharge of any debt against said city, or expenditures authorized by the city council under the provisions of this act, or any ordinance of said city or to defray the current expenses of the city, the city council shall have power, annually, to levy and collect taxes on all the real and personal property, or capital of any kind, within said city, subject to taxation by the laws for levying the taxes of this State, for the time being; which property shall be listed and assessed annually, for taxation, by assessors appointed by the city council, one for each ward, who shall make return of their assessment roll to the office of the city clerk, at such time and in such form as the city council shall, by ordinance, direct; and it shall be the duty of the city council to make provision by ordinance, for the listing and ascertaining the property to be assessed, for the valuation of such portions thereof, as by the laws levying the taxes of this State, shall, for the time being, be required to be valued, and for the correction and equalization of such assessment; and the city council, on or before the first Monday in June, annually, shall levy upon the whole amount of such assessment as corrected and equalized, such percentage, as by the concurring vote of two-thirds of all the members shall be deemed necessary; and it shall be the duty of the city clerk, on or before the first Monday in July, annually to deliver to the city collector, a duplicate of the assessment roll with the amount of taxes therein specified to be paid by each individual, with a warrant annexed thereto, under the hand of said clerk, and the mayor of said city, commanding such collector to collect from the several persons named in said assessment roll, the several sums set opposite their respective names; and in case such persons shall refuse or neglect to pay such tax, then to levy the same by distress and sale of the goods and chattels of such person, in the same manner as constables are required to do on execution, and the collector shall tax and collect, in such cases, the like fees; and it shall be the duty of such

collector, and by said warrant he shall be directed, to make return on the first Monday in October thereafter, to the office of the city clerk, of his proceedings thereon, and to pay into the city treasury the amount by him collected, after deducting therefrom such amount as the city council, by ordinance, shall allow him as compensation; and when any tax, imposed by the city council pursuant to law, shall be returned as unpaid, or shall not be paid within the time required

358 by law, the said city council may maintain an action therefor, in the name of the city, against any person liable for the payment of the same, as owners of the real estate, or as owners of the personal property charged with said tax, in any court having cognizance thereof, with interest from the time such tax was returned unpaid, and costs of suit; and when any tax, charged upon any real estate within the city, shall be returned as unpaid, by the officer authorized to collect the same, the city council may direct the city treasurer to advertise and sell such real estate as hereinafter provided; the city treasurer shall cause a notice to be published in a newspaper of the said city, for six successive weeks, describing the real estate charged with such tax remaining unpaid, notifying all persons concerned, that unless the said tax with interest, and twenty-five per cent. penalty thereon, shall be paid before the time of sale in such notice specified, he will, on a day and place therein to be stated, expose the said real estate to sale at public auction if such tax, with the interest and penalty thereon, be not paid by the time of sale, the said treasurer shall proceed to sell the same, for the shortest time any bidder will take the said premises, and pay the said tax, and interest and penalty thereon; and on such sale, he shall execute to the bidder a certificate of sale, in which the property purchased shall be described, the amount for which it was sold, and the time for which the premises were purchased shall be specified; also, the time when the purchaser shall be entitled to receive the lease hereinafter mentioned; and said treasurer shall cause a copy of said certificate, to be filed in the office of the city clerk; the grantee in such certificate, shall, at the expiration of one year after such sale, be entitled to a lease of such premises, for the time he so bid off the same, which term shall commence at the day of the date of said lease; said lease shall be given by the mayor of said city, under the corporate seal of said city, and shall be presumptive evidence in all courts and places, that such tax and assessment were legally imposed and that the proceedings touching such sale were correct; and such grantee may obtain possession thereof in the manner prescribed by law, in cases of forcible detainer; and shall hold, and enjoy the said premises during the term for which the same were granted to him, free and clear from all claims and demands of any other owner or occupant of the same, but subject to any tax that may be charged thereon, during said term; and at the expiration of said term, such grantee, his heirs or assigns, may remove any building or fixtures that may have been erected on the said premises, during the said term; any owner or claim-

359 ant of the premises so sold, may, within one year after such sale, redeem the same, by paying to such grantee, his heirs or assigns, or into the city treasury, for his or their benefit, the amount

paid by such purchaser, with the addition of twenty-five per cent. on the amount; and on such payment being made, the title of such grantee shall absolutely cease and determine; the mayor, by direction of the city council, may renew any warrants that may be lawfully issued for the collection of any tax, from time to time, as often as any tax shall be returned uncollected, or may issue a new warrant for the collection of such tax, and in such warrant shall specify the time when the same shall be returned; and the same proceedings shall, in all respects, be had on such renewed warrants, as are herein authorized upon the first warrant.

"SEC. 16. That every law or ordinance of said city, before it shall be of any force or validity, shall be ordered to be engrossed for its final passage, by a majority of all the members of the city council concurring; it shall then be reconsidered by the city council, and if at its final passage it shall be adopted by a majority of all the members concurring, it shall become a law of said city; and all questions on the engrossment or final passage of any law or ordinance, or on the appointment of any officer of said city, shall be decided by yeas and nays, and the names of the persons voting for or against the same, shall be entered in the journals of said council; and all laws or ordinances passed as aforesaid, shall be signed by the presiding officer of the council and the city clerk, and forthwith published in one or more newspapers of said city.

"SEC. 17. That all qualified electors for members of the General Assembly of this State, who have resided within the bounds of said city one year next preceding the election, shall be deemed qualified voters of said city, and shall be entitled to vote in the ward in which they respectively reside, for any officer in the City required by this act to be elected by the qualified voters of said city; and in all elections for city officers, after the organization of said city government under this act, the mayor shall issue his proclamation to the qualified voters of said city, setting forth the time of such election, the place or places where the same is to be held in the several wards, and the several officers to be chosen; and said proclamation shall be published in one or more newspaper, printed or in general circulation in said city, for at least ten days previous to said election; and after the organization of the city government under this act, it shall be the duty of the city council to provide the place or places of holding all elections in said city for said city officers, the hour of the day the same shall be opened, the time the same shall continue open, to appoint the judges thereof, provide for the making and directing the returns of elections, the time and manner of opening the returns and of making an abstract thereof, and of keeping a journal of the same; and may make such other arrangements respecting said elections, as may be lawful and convenient for the citizens of the several wards; and the person or persons having the highest number of votes shall be declared duly elected.

"SEC. 18. That in all cases brought before the mayor, for the violation of any of the ordinances of the city, when the defendant is adjudged to pay a fine or penalty, the defendant shall have a right, within ten days, to appeal to the Court of Common Pleas of Cuya-

hoga County, upon giving bond with such security as the mayor shall approve, in double the amount of the debt and costs; and if double the amount of such judgment do not amount to fifty dollars, such bond shall be fifty dollars, conditioned to pay the judgment and costs which may be rendered against him, her or them, in said court of common pleas; and in all cases appealed under the provisions of this act, the prosecution may be by action of debt or by indictment as the case may require, and may proceed in the same manner as offences against the laws of the State are prosecuted; and the prosecution shall be managed and conducted by such counsel as for that purpose shall be authorized by the city council; and all fines imposed or penalties recovered shall, when collected, be paid into the city treasury; and whenever bail for an appeal as aforesaid, shall have been perfected as above provided, the mayor shall recall any execution which may have issued on any judgment as aforesaid.

"SEC. 19. That the city council be, and they are hereby authorized, at the expense of said city, to provide for the support of common schools therein; and for that purpose each of the wards of said city shall constitute a school district, until such time as the city council may divide each ward into two or more school districts, which they are hereby authorized to do, in such manner as they may deem most convenient, having due regard to present and future population; and they are hereby authorized to purchase in fee simple, or to receive as a donation for the use of the city, a suitable lot of ground in each school district, as a site for a school house therein;

361 and they are hereby authorized to erect in each district a good and substantial school house, of such dimensions as shall be convenient for the use of common schools in said city, and to defray the necessary expenses of building and constructing such school houses, and also to pay the purchase money for the lots of land on which the same shall be erected; it shall be lawful for the city council, annually to levy in addition to the other taxes in said city, a tax, not exceeding one mill on the dollar, upon all property in the city subject to the payment of annual taxes by the provisions of this act, until a sufficient sum shall be raised and collected from such tax to meet all the expenses which shall be incurred, for the purchase of lots of land and the erection of the school houses aforesaid: Provided, it shall be lawful for said city to borrow such sum or sums of money as may be sufficient and necessary for purchasing or building as aforesaid, and to refund or pay the same as the tax aforesaid shall be collected; and the said tax is hereby made a special fund to be appropriated to no other purpose.

"SEC. 20. That for the support of the common schools in said city, and to secure the benefits of education to all the white children therein, it shall be the duty of the city council annually, to levy and collect a tax not exceeding one mill on the dollar, upon all the property in said city subject to the payment of annual taxes by the provisions of this act, which shall be collected at the same time and in the same manner as is provided for the collection of the annual taxes; which tax, together with such as may be collected by the

county treasurer for school purposes, within such part of the county of Cuyahoga as is within the limits of said city, shall be exclusively appropriated to defray the expenses of instructors and fuel for said schools, and for no other purpose whatever; which schools shall be accessible to all white children, not under four years of age, who may reside in said city, subject only to such regulations for their government and instruction, as the board of managers hereinafter mentioned, may from time to time prescribe.

"Sec. 21. That the city council shall annually select one judicious and competent person from each school district in the city as a manager of common schools in said city, which managers shall constitute and be denominated "The Board of Managers of Common Schools in the City of Cleveland," who shall hold their office for one year, and until their successors are appointed and qualified, and shall fill all vacancies which may occur in their own body, during the time for which they shall be appointed.

362 "Sec. 22. That the said board of managers shall have the general superintendence of all common schools in said city, and from time to time shall make such regulations for the government and instruction of the white children therein, as to them shall appear proper and expedient, and shall examine and employ instructors for the same; and shall cause a school to be kept in each district for at least six months in each year, and shall cause an accurate census to be taken annually, in each district, of all the white children therein, between the ages of four and twenty-one years; and require of the several instructors thereof, to keep a record of the names and ages of all persons by them respectively instructed, and the time each shall have attended said schools, and return a copy of such record to the board of managers, at the close of each and every current year; and said board shall certify to the city council the correctness of all accounts for expenses incurred in support of said schools, and give certificates thereof to the persons entitled to receive the same; they shall, at the close of every current year, report to the city council the state and condition of the several common schools in said city, as well the fiscal as the other concerns in relation thereto, and a particular account of their administration thereof; and they shall do and perform all other matters and things pertaining to the duties of their said offices, which may be necessary and proper to be done, to promote the education and morals of the children instructed in said schools or which may be required of them by the ordinances of said city, not inconsistent with the provisions of this act: Provided, That no person shall be employed as an instructor in any of said schools, who has not been first examined by the board of managers, and received a certificate of qualifications, as to his or her competency and moral character.

"Sec. 23. That all moneys which shall belong to the village of Cleveland, or which said village shall be entitled to at the time said city shall be organized under this act, for the use of common schools therein, shall be paid over to and held by the city treasurer, and all moneys hereafter levied and collected within the limits of said city, for the support of common schools, and also all other monies ap-

propriated by law for the use of common schools therein, shall be paid into the city treasury as a separate and distinct fund, and shall not be applied, under any pretence whatever, to any other use, than that for which it was levied and collected; and a separate and
 363 particular account of the receipts and expenditures thereof, shall be kept by the treasurer, in a book to be provided for that purpose; and the said treasurer shall not be entitled to receive any percentage, premium or compensation, for receiving or paying out of said fund, or for keeping the accounts thereof.

"SEC. 24. That the city council shall fix by ordinance, the commencement and termination of the current year of said common schools, and determine the time and duration of all vacancies thereof, which shall be the same throughout said city; and the said city council may at their discretion, at any time previous to the erection of the school houses provided for in this act, lease on such terms and conditions as they may deem proper in the several school districts of said city, and for such times as they shall think necessary, convenient buildings for the use of common schools therein, to be occupied only till such school houses shall be erected and prepared for the reception of such schools: Provided, That the property of black or mulatto persons shall be exempted from taxation for school purposes under this act.

"SEC. 25. That any person to be eligible for any office under the provisions of this act, shall be a qualified voter of the city.

"SEC. 26. That the president, recorder, and trustees, and all the other officers of the corporation of the Village of Cleveland, now in office therein, shall remain in their respective offices and perform the several duties thereof, until the mayor and the city council are elected and qualified under this act; and all laws, ordinances, and resolutions passed and adopted by the corporate authorities of said village, shall be and remain in full force until altered or repealed by the city council established by this act.

"SEC. 27. That the said city of Cleveland shall be, and is hereby invested as the lawful owner and proprietor of all the real and personal estate, and all the rights and privileges thereof belonging to the corporation of the village of Cleveland; together with all the property, funds and revenues, and all moneys, debts and demands, due or owing to said village of Cleveland, or to the president, recorder and trustees thereof, as a corporate body, which by or under any former acts, ordinances, grants, donations, gifts, or purchases, have been acquired, vested, or in any manner belonging to said corporation, and the same are hereby transferred to the corporate body created by this act; and all suits pending and judgments recovered
 364 by or in favor of, or against said village of Cleveland, and all rights, claims and demands, in favor of, or against the same, may be continued, prosecuted, completed, defended, and collected, in the same manner as though this act had never been passed; and the said city shall be accountable for all debts and liabilities of said village corporation.

"SEC. 28. The president and trustees or a majority of them, of the corporation of Cleveland village, shall designate such time in

the month of April, 1836, for holding the first election, as to them shall seem expedient, and they shall appoint three suitable persons in each ward of said city, to be judges of the election, under the provisions of this act, also two suitable persons to be the clerks thereof, in each ward, and shall notify the several persons so appointed; and shall publish in one or more of the newspapers in said city, at least ten days before said election, the several places designated for holding the same, and to procure a suitable place in each ward for holding the elections which said first election shall be opened between the hours of nine and eleven o'clock in the forenoon, and shall continue open till five o'clock in the afternoon; and said election shall be conducted agreeably to the laws regulating township elections; and it shall be the duty of the judges of said elections in the several wards within two days thereafter, to make and direct the return thereof to the president of said village corporation at his office, in the same manner that election returns are required to be made to the clerk of the Court of Common Pleas, by the act entitled 'An act to regulate elections;' and the said president, or person acting as such, shall, within three days after such election, open the returns which shall have been made to him as aforesaid, and make an abstract thereof, and immediately notify in writing the persons elected as aforesaid of their several elections under this act.

"SEC. 29. That the act entitled 'An act to incorporate the village of Cleveland,' passed December 22, 1814, and the several acts amendatory thereto, and all acts or parts of acts inconsistent with this act, be, and the same are hereby repealed, saving and excepting as is hereinbefore excepted.

WILLIAM MEDILL,

Speaker pro Tem. of the House of Representatives.

ELIJAH VANCE,

Speaker of the Senate.

March 5, 1836.

And further to maintain the issues on their part, all the
365 defendants offered in evidence contract between the City of Cleveland, The Lake Shore & Michigan Southern Railway Company, and The Cleveland, Columbus, Cincinnati & Indianapolis Railway Company, dated October 5th, 1868, being a contract for paving Front Street between certain points.

The COURT: Was that the same property that was conveyed by the contract of 1849?

Mr. FOOTE: Except it also includes the right to lay tracks between the 132 and the 75-foot line, etc.

A true copy of said contract is as follows, to wit:—

Contract Between City of Cleveland and Lake Shore and Michigan Southern Railway Company, Cleveland, Columbus and Indianapolis Railway Company,

Grading and Paving Front Street.

October 5th, 1868.

Articles of agreement, made by and between the City of Cleveland, party of the first part; The Lake Shore Railway Company and the Cleveland, Columbus, Cincinnati and Indianapolis Railway Company, party of the second part.

Witnesseth: That the party of the first part hereby agree to grade and improve Front Street between the Government pier and Water Street, in manner and form as hereinafter specified.

The street to be paved and curbed with Medina (N. Y.) sand stone.

From the Government pier to Spring Street the curb line on the southerly side of Front street shall be twenty (20) feet from the southerly line of said street, and the paved roadway and gutters shall be forty (40) feet in width.

From the easterly line of Spring Street to Water Street the curb line on the southerly side of Front Street shall be twelve (12) feet from the southerly line of said Front Street, and the paved roadway and gutters shall be thirty-six (36) feet in width, and the northerly curb line shall be thirty-six (36) feet from the southerly curb line, and there shall be a sidewalk twelve (12) feet in width along the northerly curb line of said street between the easterly line of Spring Street to Water Street.

And the above named parties of the second part hereby agree for and in the consideration hereinafter specified, to pay one-half the cost and expense of grading and paving said roadway and gutters, and laying of curb stones as above specified; and the party of the first part hereby agree in consideration of such payment by the said parties of the second part for the aforesaid improvement, to grant to the said parties of the second part, to wit: The Lake Shore Railway Company and the Cleveland, Columbus, Cincinnati and Indianapolis Railway Company, the right to occupy with their tracks and turnouts or switches all that portion of said Front Street lying northerly of a line parallel with the southerly line of said street, and seventy-five (75) feet therefrom, and extending from the Government property to the westerly line of Spring Street.

In witness whereof the said party of the first part hath hereunto caused the corporate seal to be affixed and these presents to be subscribed by S. Buhrer, mayor of said city; and the said parties of the second part hath hereunto caused their corporate seal to be affixed and these presents to be subscribed by them respectively.

Cleveland, October 5, 1868.

S. BUHRER, *Mayor.*

[City of Cleveland Seal.]

LAKE SHORE RAILWAY COMPANY,

By J. H. DEVEREUX, *Vice President.*

CLEVELAND, COLUMBUS, CINCINNATI AND
INDIANAPOLIS RAILWAY COMPANY,

By L. M. HUBBY, *President.*

[C. C. C. & I. Seal.]

And further to maintain the issues on their part, all the defendants offered in evidence the following receipt, it being admitted by counsel for the plaintiff that the signature thereto is the signature of S. T. Everett, and that said S. T. Everett was at the time said paper bears date, to wit, October 16, 1869, City Treasurer of the City of Cleveland. A true copy of said receipt is as follows:—

367 The Lake Shore & Michigan Southern Railway Company to
City of Cleveland, Dr.

1869.

October 11th. For Special Tax (as per contract) for paying Front Street..... \$7,809.05
C. C. C. & I. Rr. Co. proportion $\frac{1}{3}$ 2,603.02

Lake Shore & Mich. South. Rr. Co. proportion $\frac{2}{3}$ \$5,206.03

(Eng'r Dep't No. 1481.)

Received Oct. 16th, 1869 of The Lake Shore & Mich. Southern Railway Co., Five Thousand Two Hundred and Six 03-100 dollars, in full of the above amount.
\$5,206.03.

S. T. EVERETT,
City Treas.,

Per J. B. S.

Authorized.

CHAS. COLLINS,
Chief Engineer, Lake Shore Division.

Examined and correct,
C. P. SELAUNT, *Auditor.*

Approved,
N. & Y., *Pres't.*

(Endorsed.)

Lake Shore & Michigan Southern Railway.

No. 3081. \$5,206.03.

CITY OF CLEVELAND, *October 11th, 1869.*

Chief Engineer's Department.

New and Re-rolled Rails.....
Repairs Roadway and Track.....
“ Bridges.....
“ Fences.....
“ Telegraph.....
“ Buildings and Fixtures.....
Second Track.....
Bridge Masonry.....
Real Estate Purchased.....
368 Fuel Account—Wood.....
“ “ Coal.....
Local Tax..... \$5,206.03

And further to maintain the issues on their part, all the defendants offered in evidence agreement made and entered into June 3, 1879, with the exhibit thereto attached, between City of Cleveland, and The Cleveland, Columbus, Cincinnati and Indianapolis Railroad Company, with reference to putting in a switch track.

To which the plaintiff objected, on the ground that it is a license to this company to lay a switch-track in Front Street, which is a part of the property especially reserved for street purposes in 1849, and the right of the City to grant such track facilities in that street is not in controversy in that law suit, the defendants having all agreed that so far as the contract of 1849 is concerned they paid nothing for that strip.

Mr. FOOTE: We think it throws light, as showing the limitations of the street over which they were then attempting to exercise jurisdiction.

Mr. SANDERS: It seems to me that is competent for the purpose of showing recognition by the city of Front Street as being 132 feet wide, and as a recognition that the property here has not been treated as a street.

The COURT: It may be admitted for that purpose. (To which ruling of the court, overruling the objection, the plaintiff then and there excepted.)

A true copy of said agreement, with the plat attached, is as follows, to wit:

This agreement made and entered into this 3rd day of June, 1879, by and between the City of Cleveland and The Cleveland, Columbus, Cincinnati and Indianapolis Railroad Company, Witnesseth:

That the said City of Cleveland has granted and does hereby in pursuance of an Ordinance of said City, passed June 2nd, 1879, give and grant to said Railroad Company the right to occupy an additional portion of Front Street by the extension of its north line of track as now laid in said street by a switch connecting with said track at a point about ten hundred and fifty feet from the dock line at the westerly terminus of said street at Cuyahoga River and extending

369 rection to the dock line aforesaid. The rights herein granted to be enjoyed by said company during the pleasure of the Council. And the said Cleveland, Columbus, Cincinnati and Indianapolis Railroad Company in consideration of the rights and privileges so as above granted and conveyed hereby stipulate and agree to and with said City to pave or plank that portion of said street covered by the roadbed of said track and switches to a uniform level and grade with the paved portion of said street bordering upon said roadbed and thereafter to keep said portion of said street so paved and planked in constant good repair and condition and said company hereby agrees as between said company and said city to be answerable to persons and the owners of property in any way damaged by reason of the use or occupancy of said street by said track or switch, or from the cars and locomotives operated thereon, and to save the city harmless from the results of such use and occupancy aforesaid.

In witness whereof, the said parties have caused this agreement to be by them subscribed and their respective seals to be hereunto affixed as of the day and year first above named.

CLEVELAND, COLUMBUS, CINCINNATI &
INDPLS. RY. CO.,

By I. H. DEVEREUX, *President.*

[SEAL.] R. R. HERRICK, *Mayor.*

(Endorsed.)

Agreement between the City and C. C. C. & I. R. Co. for additional switch at Front Street. Referred to the City Solicitor June 2nd, 1897.

W. H. ECKMAN,
City Clerk.

Payment File No. 14, Real Estate, C. C. C. & St. L. Ry. Co.
(The Exhibit offered in connection with said agreement, being a plat of the locality, follows.)

And further to maintain the issues on their part all the defendants offered in evidence ordinance of the City of Cleveland, found in Book A, page 185, a true copy of which is as follows, to wit:

An Ordinance to Change the Name of Bath Street, in the City of Cleveland.

370 "Be it ordained by the City Council of the City of Cleveland, That the name of Bath Street be and the same is hereby changed to Front Street.

WILLIAM CASE, *Mayor.*"

"Passed June 3rd, 1851.

"J. B. BARTLETT,
City Clerk.

Also ordinance on page 272 of said Book A, a true copy of which is as follows, to wit:

"Be it ordained by the City Council of the City of Cleveland, That the grade of Front Street be and it is hereby established as follows:

"Beginning in the center of Front Street on the West line of Water Street at an elevation of forty-one feet above the base of levels; thence with an uniform descent to the center line of Spring Street produced at an Elevation of 12.44 feet above the base of levels; thence with an uniform descent fifty feet to an Elevation of seven feet above the base of levels; according to the profile of Front Street marked 'No. 13' now on file in the office of the City Civil Engineer;—this ordinance to be in force from and after its passage.

"WILLIAM H. SHAW,
President of Council.

"Passed April 7th, 1854.

"J. B. BARTLETT,
City Clerk."

And further to maintain the issues on their part, all the defendants offered in evidence proceedings of common council of the City of Cleveland, from Journal E, as follows:

City Council, Special Meeting, Sept. 1st, 1849.

Sept. 1—Sept. 11, 1849.

Present—the Mayor, & Messrs. Brownell, Cayler, Case, Everett, Gill, Hughes, McIntosh, Mack, Mollen, Seymour.

Reports.

Bath Street Appropriated.

Mr. Seymour presented the Report of the special committee appointed to confer with the Directors of the Cleveland Columbus and Cincinnati Rail Road Company in relation to the appropriation of Bath St. which was accepted.

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Resolutions.

By Mr. Gill, Resolved, That the report of the special committee appointed to confer with the Directors of the Cleveland, Columbus and Cincinnati Rail Road Company upon the subject of the appropriation of Bath Street so called be accepted and adopted.

Adopted ayes 10, Nays 0.

By the same, Resolved, That the Mayor be and he is hereby directed on behalf of the City to execute an agreement with said Cleveland, Columbus & Cincinnati Rail Road Company for the occupation of part of Bath Street containing the terms, stipulations and conditions inserted in the report of said Committee to the Council this day adopted, upon said Company fulfilling the covenants therein stipulated. Adopted, Ayes, 10, Nays, 0.

Rail Road Track South Side Bath St.

By Mr. Case, Resolved, that the C. C. & C. R. R. Co. have permission to locate a side track leading from the Car Manufactory to the pier through the South part of Bath Street under the direction and to the satisfaction of the Special Com. on Bath Street, said track to remain one year.

Adopted.

On motion the Council adjourned.

J. B. BARTLETT,
City Clerk.

Also the following, from Journal D of Com. Council, page 64:

Regular Meeting, Sept. 1, 1845.

Bath Street, \$300.

The Committee on Wharves &c. to whom was referred the Petition of Citizens for the opening of Bath Street, reported by Resolution appropriating \$300 to open said Street two rods in width, from the piers to Meadow Street.

Report accepted.

And further to maintain the issues on its part, defendant The Cleveland, Cincinnati, Chicago & St. Louis Railway Company offered in evidence Articles of Incorporation of The Cleveland Columbus & Cincinnati Rail Road Company, found in 34 O. L. 533, as follows, to wit:

372 An Act to Incorporate the Cleveland, Columbus & Cincinnati Railroad Co.

SEC. 1. Be it enacted by the General Assembly of the State of Ohio, That John H. Groesbeck, Oliver M. Spencer, John Kilgour, George Luckey, Griffin Taylor, Nicholas Longworth, and William Disney, of the county of Hamilton; Samuel Howell, of the county of Green, Charles Paist, of the county of Clark; Samuel N. Carr, of the County of Madison; Lyne Starling, William Neill, and John A. Bryan, of the county of Franklin; Hosea Williams, Milo D. Pettibone, Nathan Dustan, Charles Carpenter and James Eaton, of the county of Delaware; Allen G. Miller, William McLaughlin, Baldwin Bentley, John Rugler, James Purdy, and William McFaull, of the county of Richland; Richard Hargrave, Joseph McComb, John Ihrig, William Read, Thomas Robinson, and Joseph S. Lake, of the county of Wayne; Osmer Curtis, B. S. Brown, Alexander Elliott, D. S. Norton, and S. W. Hildreth, of Knox County; and John Miller, Isaac Bonnet, J. S. Irvine, and S. C. McDowell of Holmes County; William Hadley, Samuel H. Hale, Isaiah Morris, and Thomas Palmer, for the county of Clinton; Stephen N. Sargeant, Abram Freese, Reuben Smith and Benjamin Durham, of the county of Medina; Herman Ely, Artemas Beebe, Edwin Byington, Samuel Crocker, and Eber W. Hubbard, of the county of Lorain; Josiah Barber, Reuben Wood, Richard Hilliard, Truman P. Handy, James S. Clarke, Samuel R. Hutchinson, Anson Hayden, and Silas Belden, of the county of Cuyahoga; and their associates, and such persons as may hereafter be associated with them, shall be, and they are hereby created a body politic and corporate, by the name of "The Cleveland, Columbus and Cincinnati Rail-road Company," for the purpose of constructing a railroad from the city of Cleveland, through the City of Columbus and the town of Wilmington, to the city of Cincinnati; and they are hereby invested with the powers and privileges which are by

law incident to corporations of a similar character, and which are necessary to carry into effect the objects of the company; and if any of the persons above named, shall die, or neglect to exercise the powers and discharge the duties hereby created, it shall be the duty of the remaining persons, or a majority of them, to appoint suitable persons to fill such vacancies.

373 SEC. 2. The capital stock of said company shall be three millions of dollars, to be divided into shares of one hundred dollars; and the persons in the first section named, or a majority of them, shall cause books of subscription for said stock, to be opened, at such times and places, as they may appoint, under the direction of such individuals as they may designate, thirty days notice of which shall be given by advertisement in one or more newspapers printed in each of the cities above mentioned; and the book shall remain open ten days, and should it be necessary to open the books more than once, the like notice shall be given in each instance; and on every share subscribed for five dollars shall be paid at the time of subscription.

SEC. 3. Whenever the sum of four hundred thousand dollars, or a greater part of said stock shall have been subscribed, it shall be the duty of said persons, or a majority of them, to call a meeting of the stockholders, by causing notice to be published in one or more newspapers in general circulation in the respective places in which stock shall have been subscribed, at least thirty days previous thereto, of the time and place of holding said meeting, which place shall be at some convenient point, on or near the route of said rail road; at which meeting, the stockholders who shall attend for that purpose, either in person or by lawful proxy, shall elect by ballot, nine directors, who shall hold their offices during one year, and until others shall be chosen and qualified in their places; and the persons named in the first section, or any five of them, shall be inspectors of the first election of directors of said corporation, and shall certify, under their hands, the names of those duly elected; and shall deliver over to them the said certificates and subscription books; and at said election, and all other elections, or voting of any description, every member shall have a right of voting by himself, or by proxy duly authorized in writing; and each share shall entitle the holder to one vote; and the management of the concerns of said corporation shall be entrusted to nine directors, to be elected annually, by the stockholders, by ballot; and the directors first chosen, and such directors as shall thereafter be chosen, at any subsequent election, shall immediately thereafter, meet and elect one of their number, who shall be president thereof, until another election; and also elect a treasurer and secretary, who may be removed at the pleasure of said president and directors, and others selected in their stead; and a majority of said directors shall constitute a board, for every purpose within the provisions of this act.

374 SEC. 4. That in case it should at any time happen, that the election of directors shall not be made, on any day, when pursuant to this act it ought to be made, the said corporation shall

not, for that cause, be deemed to be dissolved, but such election may be held at any other time, directed by the by-laws of said corporation.

SEC. 5. That the books of subscription shall remain open as long as the president and directors of said company shall see fit; and each subscriber shall be bound to pay, from time to time, such instalments of his stock, as the said president and directors may lawfully require, not exceeding ten dollars, every sixty days, on each share, be given at least thirty days' previous notice of the time and place of making the payment required, in at least one newspaper in general circulation in each of the counties through which the road may pass, if any stockholders reside therein.

SEC. 6. That if any subscriber shall neglect to pay his subscription, or any portion thereof, for the space of thirty days after he is required so to do, by the said president and directors, notice having been given, as required in this act, the treasurer of said corporation, or other officer duly authorized for that purpose, *and* may make sale of such share or shares, at public auction, to the highest bidder, giving at least thirty days' notice thereof, in some newspaper in general circulation at the place of sale, and the same shall be transferred by the treasurer, to the purchaser; and such delinquent subscriber shall be held personally accountable to the corporation for the balance, if his share or shares shall be sold for less than the amount remaining due thereon, and shall be entitled to the overplus, if the same be sold for more than the amount so remaining due, after deducting the costs of sale.

SEC. 7. That the said corporation be, and they are hereby authorized, to cause such examinations and surveys to be made, by their agents, surveyors and engineers, of the ground lying in the vicinity of said route, as shall be necessary to determine the most eligible and expedient route, whereon to construct said railroad; and the examination being made and the route determined, it shall be lawful for said corporation, by themselves or their lawful agents, to enter upon, and take possession of all such lands, materials, and real estate, as may be indispensable for the construction and maintenance of said railroad, and the examination requisite and appertaining thereto; but all lands, materials, or real estate, thus
375 entered upon, used or occupied, which are not donations, shall be purchased by the corporation, of the owner or owners, at a price to be mutually agreed between them; and in case of disagreement as to the price, or if the owner be a married woman, infant, insane or an idiot, or non-resident of the county, it shall be the duty of the commissioners of the proper county, upon a notice to be given them by either party, in writing, and making satisfactory proof that the opposite party, if living in the county, or the husband of such married woman, or guardian of such infant, or insane person, if living in the county, has had at least three days' notice of the intended application, to appoint three disinterested freeholders of the proper county, to determine the damages which the owner or owners of the lands, materials or real estate so entered upon, or used by the said corporation, has or have sustained, by

the occupation or use of the same; and upon payment, by the said corporation, of such damages, to the person or persons to whom the same may be awarded, as aforesaid, then the said corporation shall be deemed to be, and stand seized and possessed of the use, for the purpose of said road, of all such lands, materials or real estate, as shall have been appraised; and it shall be the duty of said appraisers, to deliver to the said corporation, a written statement signed by them, or a majority of them, of the award they shall make, containing a description of the land, materials or real estate appraised; to be recorded by the said corporation, in the commissioner's office in said county: Provided, That either party shall have power, except in cases only where materials are used, to appeal from the decision of the said appraisers, to the court of common pleas of the proper county, at any time within twenty days after the appraisers shall have made their return as aforesaid, and said court shall proceed thereon as in case of appeals, on application for damages in laying out and establishing county roads.

SEC. 8. That the appraisers, authorized by the foregoing section of this act, before they proceed to estimate damages, shall severally take an oath or affirmation, faithfully, impartially, and honestly to discharge their said duty, by returning the true amount of damages, over and above the benefits arising from said road, estimated in cash; and the said appraisers shall, severally, be entitled to receive from said corporation, one dollar per day, for every day they may be necessarily employed: Provided, however, That if said applicant or applicants shall not obtain an award of damages, then, and in such case, said applicant or applicants shall pay all costs.

SEC. 9. That the said corporation shall have power to determine the width and dimensions of said railroad, not exceeding one hundred feet in width, whether it shall be a double or single track; to regulate the time and manner in which passengers and property shall be transported thereon; and the manner of collecting tolls for such transportation; and to erect and maintain buildings for the accommodation of the business of the corporation, as they may deem advisable, or for their interest.

SEC. 10. That said corporation may construct the rail road across, or upon any road, canal, highway, stream of water or water course, if the same shall be necessary; but the said corporation shall restore such road, canal, highway, stream of water or water course, thus intersected or crossed, to its former state of usefulness, or in such manner as not to impair its convenience, usefulness or value, to the owners or the public.

SEC. 11. That said company shall have the power to demand and receive for tolls upon, and the transportation of persons, goods, produce, merchandise, or property of any kind whatsoever transported by them or their agents, along said railway, any sum not exceeding the following rates: on all goods, merchandise, or property of any description whatsoever a sum not exceeding one and a half cents per ton per mile for tolls, five cents per ton per mile for transportation, and for the transportation of passengers not exceeding three cents per mile

for each passenger; and any other company, person, or persons, may, with suitable and proper care, take, transport and carry persons and property on said road, subject to such by-laws as the company are by this act authorized to make.

SEC. 12. That at the regular annual meeting of the stockholders of said company, it shall be the duty of the president and directors in office for the previous year, to exhibit a clear and distinct statement of the affairs of the company; and the president and directors shall annually or semi-annually declare and make such dividend as they may deem proper, of the net profits arising from the resources of said company, deducting the necessary current and probable contingent expenses; and they shall divide the same among the stockholders of said company in proportion to their respective shares in the stock paid into the company.

SEC. 13. That the said president and directors, or a majority of them may appoint all such officers, engineers, agents and servants whatsoever, as they may deem necessary for the transaction of the business of the company, and may remove any of them at their pleasure; and they, or a majority of them, shall have power to determine the compensation of all such engineers, officers, agents or servants, and to contract with them for their respective services; and to determine by their by-laws the manner of adjusting and settling all accounts against the said company; and also, the manner and evidence of the transfers of stock in said company; and they, or a majority of them, shall have power to pass all by-laws which they may deem necessary or proper for exercising all the powers vested in the company hereby incorporated, and for carrying into effect the objects of this act.

SEC. 14. If the Legislature of this State shall, after the expiration of thirty-five years from the passage of this act, make provision by law for the payment to said company of the amount expended by them in the construction of said road, together with all moneys expended by them for necessary permanent fixtures at the time of purchase for the use of the said road with an advance of fifteen per cent. thereon, then said road, with all fixtures and appurtenances, shall vest in and become the property of the State of Ohio: Provided, That the sum to be paid by the State for the said road and appurtenances, shall not be less, in the aggregate, than the amount expended in the construction thereof, and six per cent. per annum thereon, after deducting the dividend received by the stockholders.

SEC. 15. That in any suit instituted against said corporation, service of process made upon any one of the directors, ten days before the return day thereof, shall, in all courts and places, be deemed and held, a sufficient and valid service on the said corporation.

SEC. 16. That when the said railroad shall be completed, the president and directors of said company, shall make out a minute, full and detailed statement, in writing, of the expenses incurred by the said corporation, in locating, exploring of routes, and constructing said railroad; which report shall be verified by the oaths of said president and directors, and filed by them in the office of the Secretary of this State; and if, after the first location of the route of said railroad, or

the completion of the same; as aforesaid, any alteration shall be made in the course thereof, or in any of its branches or connections, the said president and directors shall, in like manner, from time to time, make out and file statements of the expenses incurred by such alterations, branches or connections, as aforesaid.

SEC. 17. That any railroad company, now or hereafter to be chartered or created by law of this State, shall have power to join and unite with the road hereby incorporated, at any point which the directors of said company may think advisable; and any cars, carriage, or other vehicle, used on either road, joined, or intersected, may run pass, and occupy the intersected or united road, without reloading, or change of cargo or passengers; subject, however, to the rules and regulations, and to the tolls and charges, common on the road so used and occupied; and free right and privilege is hereby reserved to the state, or individuals, or any company incorporated by law of this State, to cross this road with any other road: Provided, That in so crossing, no injury shall be done to the works of the company hereby incorporated.

SEC. 18. That if any person shall wilfully obstruct, or in any way spoil, injure, or destroy said road, or any part thereof, or either of its branches, or any part thereof, or anything belonging or incident thereto, or any materials to be used in the construction thereof, or any building, fixture or carriage, erected or constructed for the use or convenience thereof, so used thereon, such person or persons shall each be liable, for every such offense, in treble the damages sustained thereby, to be recovered by action of debt, in any court having jurisdiction thereof; and shall also be subject to an indictment in the court of common pleas of the county where such offense was committed; and upon conviction thereof, shall be punished by fine, not exceeding one hundred dollars, and imprisonment, in the county jail, not exceeding twenty days.

SEC. 19. That if said road shall not be commenced within three years from the passage of this act, and completed within ten years thereafter, then this act shall be void and of no effect.

SEC. 22. Whenever the dividends of said company shall exceed the rate of six per cent. per annum, the Legislature of this state may impose such reasonable taxes on the amount of such dividends as shall be received from other railroad companies.

WILLIAM MEDILL,

Speaker pro Tem. of the House of Representatives.

ELIJAH VANCE,

Speaker of the Senate.

March 14, 1836.

And further to maintain the issues on its part, the defendant, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company offered in evidence an Act to revive the act entitled "An act to incorporate the Cleveland, Columbus and Cincinnati Railroad Company, found in Ohio Local Laws, Vol. 43, page 405, and a true copy of same is as follows, to wit:

An Act to Revive the Act Entitled "An Act to Incorporate the Cleveland, Columbus and Cincinnati Railroad Company.

SEC. 1. Be it enacted by the General Assembly of the State of Ohio, That the act entitled "an act to incorporate the Cleveland, Columbus and Cincinnati Railroad Company," be and the same is hereby revived, except as hereinafter provided.

SEC. 2. The following persons shall be commissioners to open books and receive subscriptions to the capital stock of said company, instead of the persons named in the first section of said act, to wit: John W. Allen, Philo Scoville, Richard Hilliard, Irad Kelley, Truman P. Handy, and Horatio N. Ward, of Cuyahoga County; Newton Gunn, Stephen N. Sargent, Henry Hosmer, and David King, of Medina county; John P. Reznor, William S. Granger, Charles R. Deming, James Purdy, Charles Sherman, A. G. Miller, and John Adams, of Richland county; John Schenck, Aaron N. Tallmadge, and Samuel Peasley, of Marion county; Caleb Howard, Sherman Finch, Hosea Williams, Benjamin Powers, Hiram Adams, and Otho Hinton, of Delaware county; and Lyne Starling, jun., Joseph Ridgway, Samuel Medary, Robert Neil, L. Goodale, Demas Adams, John W. Andrews, William Dennison, jun., and Orange Johnson, of Franklin county, who, or any six of whom, shall cause books to be opened for subscription to the capital stock at such times and places, and under the direction of such persons as they shall designate; and the said commissioners, or any five of them, shall be, and hereby are, authorized to organize said company according to the requirements of the third section of the act hereby revived, provided that the stockholders of said company may proceed to elect directors, and organize said company, as soon as fifty thousand dollars shall have been subscribed; and said company are hereby released from any implied requirement in the act hereby revived, to subscribe the whole amount of three millions of dollars, named in said act.

SEC. 3. The said company shall commence their railroad at some convenient point at or near the City of Cleveland, in the county of Cuyahoga, and to locate and construct the same on the most convenient route, leading towards Columbus, in Franklin
380 county; provided, however, that said company may unite said railroad with any other railroad which now is, or hereafter may be, authorized by the general assembly to be constructed, leading from any point at or near Lake Erie, to or towards the southern part of the state; and, further provided, that the said company shall not be required to construct the said railroad for the whole distance named in the act hereby revived, unless, in the judgment of the directors, the interests of the said company may so require.

SEC. 4. The subscribers to the capital stock of said company shall pay for the amount of stock subscribed by them severally, in such installments, and at such times, as the directors shall determine, of which public notice shall previously be given, by advertisement, for at least thirty days, in some newspaper in general circulation, in

each of the counties where books of subscriptions shall have been opened.

SEC. 5. The said company shall have the power to demand and receive for the transportation of persons and property over said railroad, or any part thereof, such rates as the directors of said company may deem reasonable.

SEC. 6. The said company shall have power to mortgage, hypothecate, or pledge all or any part of the said railroad or other personal or real property, belonging to said company, or any part or portion of the tolls or revenues of said company, which may thereafter accrue, for the purpose of raising money to construct said railroad, or to pay debts contracted in the construction of repairs thereof; provided said company shall not contract debts or liabilities to a greater amount than the amount of the stock subscribed, and held by responsible stockholders, and remaining unexpended, together with the means on hand, and that which may be reasonable expected to accrue within three years from the time of making such contract, unless, at the time of making said contract, the party contracting with said company be informed of such want of means on the part of such company, and, by agreement in writing, specify the time or manner in which such debt shall be paid.

SEC. 7. If the said railroad is not commenced within five years from the date of this act, the privileges granted by this act, and the act hereby revived, shall cease and determine.

381 SEC. 8. So much of the act hereby amended, and of other acts, as conflicts with the provisions of this act, are hereby repealed.

JOHN M. GALLAGHER,

Speaker of the House of Representatives.

DAVID CHAMBERS,

Speaker of the Senate.

March 12, 1845.

And further to maintain the issues on its part, defendant The Cleveland, Cincinnati, Chicago & St. Louis Railway Company offered in evidence certified copy of Articles of Agreement between the Cleveland, Columbus & Cincinnati Railroad Company and the Bellefontaine Railway Company, dated April 10, 1868. A true copy of same is as follows, to-wit:

Articles of Agreement Made and Entered into This Tenth Day of April, A. D. 1868, by and between the Cleveland, Columbus & Cincinnati Railroad Co. and the Bellefontaine Railway Co.

Whereas, The Railroads respectively owned by the said Companies above named, constitute a continuous line of Railroad, of uniform gauge, from the City of Cleveland, in the State of Ohio, to the City of Indianapolis, in the State of Indiana, and the Directors of the said respective Companies have determined that the interests of the respective stockholders of said Companies, and the public interest and convenience, will be greatly promoted by the union

of said roads into one road, and by the consolidation of the respective stocks of said Companies into one common consolidated stock;

And Whereas, The above named Companies are authorized by an act of the legislature of the State of Ohio, passed March 3d, 1851, to effect such union of their respective roads, and to form, by consolidation of their corporate rights and franchises, one joint stock Company, and have agreed so to do upon the terms and conditions hereinafter mentioned and contained;

Now, Therefore, This agreement, made by and between the said corporations, above named, parties hereto, under and by virtue of the authority conferred upon them by the above named act of the legislature of the State of Ohio, Witnesseth: that the said Cleveland, Columbus and Cincinnati Railroad Company and the said Bellefontaine Railway Company do agree, and each for itself do agree, that

the said Companies shall be consolidated into and form one
382 corporation, under the name and style of the Cleveland, Columbus, Cincinnati and Indianapolis Railway Company.

And in pursuance of the said act of the Legislature of the State of Ohio, the said parties hereto do hereby prescribe the following terms and conditions for the said consolidation, and do respectively agree thereto, and to the mode of carrying the same into effect, as herein provided for.

Article I. The Directors of said Cleveland, Columbus, Cincinnati and Indianapolis Railway Company shall be thirteen in number.

Article II. The first election of Directors for the said Cleveland, Columbus, Cincinnati and Indianapolis Railway Company, shall be held at the office of the Cleveland, Columbus & Cincinnati Railroad Company, in the City of Cleveland and State of Ohio, on the second Tuesday of May, A. D. 1868, between the hours of two and four P. M. All stockholders in the above named Companies entitled to vote at any election of Directors in either of said Companies, parties to this agreement, shall have the right to vote at the said election in person or by proxy, and shall be severally entitled to one vote for each and every one hundred dollars of stock held or owned by such stockholders in either of said Companies. The thirteen persons being stockholders in one or the other of said companies parties hereto, receiving the highest number of votes at the said election, shall be the first Directors of the Cleveland, Columbus, Cincinnati and Indianapolis Railway Company, and shall hold their office until their successors are elected and qualified according to law.

Article III. Said Directors shall, at the first meeting after their election, elect a President and such number of Vice Presidents from their own number as they may deem necessary, and shall also then, or as soon as convenient thereafter, elect or appoint a Secretary and Treasurer of said Company, and such other officers and agents as they shall from time to time find necessary for the proper transacting the business of the Company.

Article IV. After the consolidation herein provided for is perfected, and after said first election, stockholders in said consolidated

Company only by surrender and exchange of their certificates of stock in the respective Companies parties hereto, receiving therefor certificates of stock in the consolidated Company, shall be entitled to vote at any meeting of the stockholders of the Cleveland, Columbus, Cincinnati and Indianapolis Railway Company.

383 Article V. The capital stock of said Cleveland, Columbus, Cincinnati and Indianapolis Railway Company shall be fifteen millions of dollars, to be divided into one hundred and fifty thousand shares of one hundred dollars each; and the Directors of the said Cleveland, Columbus, Cincinnati and Indianapolis Railway Company may increase the stock thereof whenever they may deem it necessary and advisable.

Article VI. It being agreed that the estate, property and franchises of the Companies parties hereto, which, in pursuance of the laws of the State of Ohio, will vest in said new corporation, are relatively of unequal value, the stockholders of said Companies respectively do fix upon the following amounts to be allowed therefor by the issue of certificates, as hereinafter mentioned, to-wit: the stockholders of the Cleveland, Columbus & Cincinnati Railroad Company shall each be entitled to one hundred and twenty dollars of the stock of the Cleveland, Columbus, Cincinnati and Indianapolis Railway Company for each and every one hundred dollars of stock held by them in the said Cleveland, Columbus & Cincinnati Railroad Company; the stockholders of the Bellefontaine Railway Company shall each be entitled to one hundred dollars of the stock of the Cleveland, Columbus, Cincinnati and Indianapolis Railway Company for each and every one hundred dollars of stock held by them in the said Bellefontaine Railway Company. Scrip certificates to be issued for all fractional shares, convertible into full shares when presented in sufficient amount to entitle the holder thereof to a full share or shares. Such fractional shares not to be entitled to dividends until converted into full shares.

Article VII. The said new corporation shall, without delay, after its organization, issue to the stockholders of the respective companies parties hereto, and entitled thereto as aforesaid, and in proportion to their respective interests in the stock of the consolidated Company, certificates of stock in said Cleveland, Columbus, Cincinnati and Indianapolis Railway Company, of such form as may be deemed advisable, and be prescribed by the Directors of said Company.

Article VIII. All and singular the rights, franchises, privileges, real estate, depot grounds, rights of way, roadbed, railroad, iron rails, engines, cars, machinery, rolling stock, cash, debts, dues, demands, choses in action, and property of every description, name and
384 nature in which the said Cleveland, Columbus & Cincinnati Railroad Company and the said Bellefontaine Railway Company have respectively any right, title or interest, whether in possession, reversion or remainder with the appurtenances, shall upon the ratification of these articles and the election of the first Board of Directors of the said Cleveland, Columbus, Cincinnati & Indianapolis Railway Company, as herein and by law provided for, be held, owned and controlled by the said Cleveland, Columbus, Cincinnati and Indianapolis Railway Company, its successors and assigns, as fully and

completely, to all intents and purposes, as the said respective parties hereto do or can now hold, own, use or control the same, and no further conveyance or assurance shall be required for the full and complete vesting thereof in the said Cleveland, Columbus, Cincinnati and Indianapolis Railway Company.

Article IX. All just debts, guarantees, liabilities and obligations existing against either of the companies parties hereto, at the time of taking effect of this consolidation, shall be and are hereby assumed, and the same shall be provided for, paid and discharged by the said Cleveland, Columbus, Cincinnati and Indianapolis Railway Company, and all contracts and agreements existing between either the parties hereto and other Companies, or with any person or persons, shall be carried out and performed by the said Cleveland, Columbus, Cincinnati and Indianapolis Railway Company.

Article X. All books, vouchers, records, instruments of title, cash evidences of debt, contracts, and other documents pertaining to the business or property of the said companies parties hereto shall, without delay, be delivered to the proper officers of the consolidated Company. And the said books, records and papers shall be deemed and taken, as far as necessary, as the records and books of said consolidated Company; and said books, records, vouchers and papers shall be subject to the proper examination and inspection of all persons interested therein, who shall have the same access thereto as if the same had remained in the offices of the original Companies.

Article XI. It is agreed that these articles of consolidation shall be submitted to the stockholders of each of said Companies parties hereto, at a meeting thereof called separately for the purpose of taking the same into consideration, and ratifying or rejecting the same. Due notice of the time and place of such meeting, and the object thereof, shall be given as provided by law.

385 The time of such meeting of the stockholders of the said Cleveland, Columbus & Cincinnati Railroad Company, shall be on the second Thursday of May, A. D. 1868, and the place the office of the company, in the City of Cleveland.

The time of such meeting of the stockholders of the Bellefontaine Railway Company, shall be on the second Wednesday of May, A. D. 1868, and the place the office of the company in the Village of Galion.

Article XII. All elections for Directors of said consolidated Company, after the first election of Directors herein provided for, shall take place at such time and place and in such manner as may be prescribed by the by-laws of the Board of Directors of the consolidated Company.

Dated at Cleveland, April 10th, 1868.

By order of the Board of Directors,

CLEVELAND, COLUMBUS & CINCINNATI
RAILROAD COMPANY,

By L. M. HUBBY, *President*.

[CORPORATE SEAL.]

Attest:

GEO. H. RUSSELL, *Sec'y*.

25 cents Revenue Stamp.

By Order of the Board of Directors,

BELLEFONTAINE RAILWAY
COMPANY.

[CORPORATE SEAL.]

S. WITT, *President*.

Attest:

EDWARD KING, *Sec'y*.

We hereby certify that we have carefully compared the foregoing "Articles of Agreement" with the original copy on file, and that it is an exact duplicate or counterpart of the same.

Cleveland, O., May 14, 1868.

[CORPORATE SEAL.]

GEO. H. RUSSELL,

Sec. Cleve. Col. & Cin. R. R. Co.

[CORPORATE SEAL.]

EDWARD KING,

Sec'y Bellefontaine Railway Co.

(Certificate under Section 906, Revised Statutes of the United States.)

UNITED STATES OF AMERICA,

State of Ohio:

OFFICE OF THE SECRETARY OF STATE.

I, Charles Kinney, Secretary of State of the State of Ohio, and being the officer who under the Constitution and Laws of said State, is duly constituted the keeper of the records of articles of incorporation of all companies incorporated under the laws thereof, and the records of all papers relating to the creation of said incorporated companies, and empowered to authenticate exemplifications of the same, do hereby certify that the annexed instrument is an exemplified copy, carefully compared by me with the original record now in my official custody as Secretary of State, and found to be true and correct, of the Agreement of Consolidation of The Cleveland, Columbus and Cincinnati Railroad Company and Bellefontaine Railway Company, forming The Cleveland, Columbus, Cincinnati and Indianapolis Railway Company, filed in this office on the 16th day of May, A. D. 1868 and recorded in Volume 5, Page 305, of the Records of Incorporations; that said exemplification is in due form and made by me as the proper officer, and is entitled to have full faith and credit given it in every court and office within the United States.

In Testimony Whereof, I have hereunto attached my official signature and the Great Seal of the State of Ohio, at Columbus, this 8th day of January, A. D. 1898.

[SEAL.]

CHARLES KINNEY,

Secretary of State.

(Endorsed.)

2

Consolidation of C. C. C. R. R. Co. and Bellefontaine R. R. Co. into C. C. C. and I. Ry. Co. Filed May 16, 1868.

And further to maintain the issues on its part, defendant The Cleveland, Cincinnati, Chicago & St. Louis Railway Company offered in evidence certified copy of Articles of Consolidation of The Cleveland, Columbus, Cincinnati & Indianapolis Railway Company, the Indianapolis & St. Louis Railway Company, and the Cincinnati, Indianapolis, St. Louis & Chicago Railway Company, a true copy of same being as follows, to wit:

Agreement of Consolidation of The Cleveland, Columbus, Cincinnati and Indianapolis Railroad Company, The Indianapolis and St. Louis Railway Company and The Cincinnati, Indianapolis, St. Louis and Chicago Railway Company.

Whereas, the line of railroad of the Cleveland, Columbus, Cincinnati and Indianapolis Railway Company extends from Cleveland in the State of Ohio to Indianapolis in the State of Indiana, the said Company being a consolidated company of the State of Ohio and

Indiana, and the line of railroad of the Indianapolis and St. Louis Railway Company extends from Indianapolis to Terre Haute in the State of Indiana, the said company being a corporation of the State of Indiana, and the line of railroad of the Cincinnati, Indianapolis, St. Louis and Chicago Railway Company extends from Cincinnati in the State of Ohio to Lafayette in the State of Indiana, the said company being a corporation of the State of Indiana; and

Whereas, the line of the last named company crosses and intersects the lines of the first and second named companies at Indianapolis, forming with each of them, and forming with each other, continuous lines of railroad; and the said companies are authorized by the laws of the State of Ohio and Indiana to consolidate their stock and property, and desire so to do.

Therefore, This Agreement Witnesseth: That the said companies, acting herein by the authority of resolutions of the several Boards of Directors thereof, and subject to the ratification of the stockholders thereof, required by law, in consideration of the mutual agreements, covenants, provisions and grants herein contained, do hereby agree to consolidate their roads, property, rights and franchises, so as to become one corporation, and by these presents do merge and consolidate their capital stock, franchises and property into one company to be known by the name of "The Cleveland, Cincinnati, Chicago and St. Louis Railway Company" upon the following terms and conditions, to-wit:

First. All the rights, franchises, privileges, property, appurtenances of every description, choses in action, debts, dues and demands of each of the several companies parties hereto shall vest in the consolidated company.

Second. The consolidated company shall assume and be bound by all liabilities and obligations of each of the several companies parties hereto.

Third. The capital stock of the consolidated company shall amount to thirty million five hundred thousand dollars, divided into common and preferred stock as follows: Two hundred and five thou-

sand shares of one hundred dollars each, amounting to twenty million, five hundred thousand dollars of common stock, and one hundred thousand shares of one hundred dollars each, amounting to ten millions of dollars of preferred stock. The net earnings of the consolidated company in each and every year shall be divided as follows:

388 first, not exceeding five per cent. in quarterly instalments to the holders of the preferred stock, and the residue as may be ordered from time to time by the Board of Directors, among the holders of the common stock, beginning with the fiscal year next after the ratification of this agreement.

Fourth. The consolidated company shall not issue any evidences of funded debt, or execute any lease of railway property, which may entail increased fixed charges, except by the consent of a majority in interest of the holders of the said preferred stock, to be expressed in writing under their signatures respectively, or declared at a meeting of such preferred stockholders to be called for that purpose; with the exception of the five million four per cent. one hundred year bonds or other evidence of indebtedness proposed to be issued for the purchase or acquirement in lawful form of the Cairo, Vincennes and Chicago Railway, which said evidence of indebtedness is hereby authorized, if said purchase or acquirement shall hereafter be determined upon.

Fifth. The number of Directors of the consolidated company shall be fifteen, and the officers shall be a President, a Vice President, a Treasurer and a Secretary.

The residences of said Directors and officers shall be as follows: seven Directors in the City of New York and State of New York; eight Directors in the State of Ohio (five in the City of Cincinnati, two in the City of Cleveland and one in the City of Columbus). The President shall reside in the City of Cincinnati and State of Ohio, the Treasurer and the Secretary in the City of Cincinnati in the State of Ohio, the Vice President in the City of New York and State of New York.

The names and places of residence of the first Board of Directors of the consolidated company, who shall serve as such until their successors shall have been elected and qualified according to law, shall be as follows:

1. Cornelius Vanderbilt, New York.
2. William K. Vanderbilt, New York.
3. Chauncey M. Depew, New York.
4. J. Pierpont Morgan, New York.
5. George Bliss, New York.
6. H. McK. Twombly, New York.
7. James D. Layng, New York.
8. S. J. Broadwell, Cincinnati, Ohio.
9. Alexander McDonald, Cincinnati, Ohio.
10. Orlando Smith, Cincinnati, Ohio.
11. Melville E. Ingalls, Cincinnati, Ohio.
- 389 12. William P. Anderson, Cincinnati, Ohio.
13. Amos Townsend, Cleveland, Ohio.
14. Truman P. Handy, Cleveland, Ohio.

15. Benjamin S. Brown, Columbus, Ohio.

Sixth. The manner of converting the capital stock of each of the constituent companies parties hereto into the capital stock of the consolidated company shall be as follows:

For each share of the present capital stock of the Cincinnati, Indianapolis, St. Louis and Chicago Railway Company shall be issued upon the surrender thereof to the consolidated company, one share of preferred stock and thirty per cent of one share of the common stock of the consolidated company.

For each share of the capital stock of the Cleveland, Columbus, Cincinnati and Indianapolis Railway Company surrendered to the consolidated company shall be issued to the holder thereof common stock of the consolidated company at the rate of one hundred and thirteen and one-third dollars in stock of the consolidated company for one hundred dollars in stock of the said Cleveland, Columbus, Cincinnati and Indianapolis Railway Company.

The entire capital stock of the Indianapolis and St. Louis Railway Company, being now the property of the Cleveland, Columbus, Cincinnati and Indianapolis Railway Company, five thousand shares of the capital stock of the consolidated company, shall be issued therefor to the holders of the stock of the Cleveland, Columbus, Cincinnati and Indianapolis Railway Company in proportion to their respective holdings of stock in the last named company, being at the rate of three and one-third dollars in stock of the consolidated company, for each share of the said Cleveland, Columbus, Cincinnati and Indianapolis Railway Company.

Scrip convertible into stock shall be issued for fractions of shares of preferred and common stock.

These changes and deliveries of stock shall be made as soon after the ratification of this agreement by the stockholders of the three constituent companies as shall be practicable.

Nothing in this agreement shall prevent the directors of each of the constituent companies from declaring and paying dividends out of the net earnings of said companies respectively until this agreement shall have gone into effect.

390 The holders of the preferred stock shall be entitled to and shall receive from the consolidated company at the rate of five per cent per annum from the taking effect of this agreement until the beginning of the fiscal year next after the said date.

Seventh. The net income constituting the funds applicable to the payment of dividends upon the said preferred stock shall be computed, ascertained and determined for each three months ending on the thirtieth day of September, on the thirty-first day of December, on the thirty-first day of March, and on the thirtieth day of June respectively in each and every year, in the manner following, i. e.:

From the earnings derived from the operation of the railroads of the consolidated company hereby formed, during such three months, shall be deducted all the expenses of operating and maintaining, repairing and renewing the railroads and equipments, and for carrying on their business, including amounts due for rental, lease of

land and other property, during the period covered by such computation, the amount of interest on any bonds and obligations of such railway companies accrued during the period of such computation, and all taxes and assessments levied during the said three months by lawful authority upon the railway company or its property, or which the said railway company is or may become liable to pay.

The net income which may arise in any one fiscal year, to wit, from the thirtieth day of June in one year to the thirtieth day of June in the next succeeding year, applicable to the payment of dividends upon the said preferred stock, shall only be applied to the extent of five per cent for the said fiscal year, but the net income in any one quarter, which shall exceed the sum necessary to provide a dividend of one and one-quarter per cent for that quarter, may be applied to the payment of any deficiency of the net income of any other quarter of said fiscal year.

Eighth. This agreement for consolidation shall take effect upon its being adopted by the directors of the constituent companies and upon ratification and adoption by the stockholders of each of the constituent companies, and upon filing the same in the office of the Secretary of State of each of the States of Ohio and Indiana, and upon the due making and perfecting of these articles of agreement as required by law.

391 Ninth. The several constituent companies, each for itself and not for the other, in consideration of the premises, doth hereby grant, convey, assign and set over and vest in the said consolidated company, for the purpose of such consolidation, all of the railroads, property, rights, privileges, franchises, and powers now held by it, or in or to which it has any right, title, interest or claim either in law or equity.

In Witness Whereof, the said Cleveland, Columbus, Cincinnati and Indianapolis Railway Company, by its Board of Directors has caused its corporate seal to be hereunto affixed and these presents to be signed by its President and Secretary, and a majority of its said Board have hereunto set their hands and seals the twenty-seventh day of March, 1889; and the said Indianapolis and St. Louis Railway Company, by its Board of Directors, has caused its corporate seal to be hereunto affixed, and these presents to be signed by its President and Secretary, and a majority of its said Board have hereunto set their hands and seals the twenty-seventh day of March, 1889; and the said Cincinnati, Indianapolis, St. Louis and Chicago Railway Company, by its Board of Directors, has caused its corporate seal to be hereunto affixed and these presents to be signed by its President and Secretary and a majority of its said Board have

hereunto set their hands and seals the nineteenth day of March,
1889.

CLEVELAND, COLUMBUS, CINCIN-
NATI AND INDIANAPOLIS RAIL-
WAY COMPANY,

By J. D. LAYNG, *President*.

Attest:

J. T. WANN, *Secretary*.

J. D. LAYNG,
H. McK. TWOMBLEY,
A. G. DULMAN,
C. VANDERBILT,
CHAUNCEY M. DEPEW,
T. P. HANDY,
AMOS TOWNSEND,
W. BAYARD CUTTING,
C. F. COX,

Directors.

INDIANAPOLIS AND ST. LOUIS
RAILWAY COMPANY,

[SEAL.]

By J. D. LAYNG, *President*.

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Attest:

J. T. WANN, *Secretary*.

J. D. LAYNG,
T. P. HANDY,
JOHN T. DYE,
AMOS TOWNSEND,
H. H. POPPLETON,

Directors.

CINCINNATI, INDIANAPOLIS, ST.
LOUIS AND CHICAGO RAILWAY
COMPANY,

[SEAL.]

By M. E. INGALLS, *President*.

Attest:

J. C. DAVIE, *Secretary*.

GEO. BLISS,
M. E. INGALLS,
S. J. BROADWELL,
ALEX. McDONALD,
A. M. FLETCHER,
T. A. MORRIS,
E. T. JEFFERY,
R. R. CABLE,
LARZ ANDERSON,
GEO. HOADLEY,

Directors.

I, J. T. Wann, Secretary of the Cleveland, Columbus, Cincinnati and Indianapolis Railway Company, do hereby certify that the foregoing agreement was submitted to the stockholders of the said company at a meeting thereof called for the purpose of taking the same into consideration on the fifteenth day of May, 1889, at the city of Cleveland, in the State of Ohio.

At said meeting the said agreement was considered and a vote by ballot taken for the adoption or rejection of the same. That 122,933 votes, representing 122,933 shares of stock were cast at the said meeting, all of which were cast for the adoption of the agreement, being more than two-thirds of all the votes cast at the said meeting, and that the number of shares of stock of the said company entitled to vote at the said meeting was 150,000 shares.

[SEAL.]

J. T. WANN, *Secretary.*

Dated May 15th, 1889.

I, J. T. Wann, Secretary of the Cleveland, Columbus, Cincinnati and Indianapolis Railway Company, do hereby certify that the foregoing agreement was submitted to the stockholders of said company at a meeting thereof called for the purpose of taking the same into consideration on the fifteenth day of May, 1889, at the city of Indianapolis, in the state of Indiana.

At said meeting the said agreement was considered and a vote by ballot taken for the adoption or rejection of the same. That 122,935 votes, representing 122,935 shares of stock were cast at the said meeting, all of which were cast for the adoption of the agreement, being more than two-thirds of all the votes cast at the said meeting, and that the number of shares of stock of the said company entitled to vote at the said meeting was 150,000 shares.

[SEAL.]

J. T. WANN, *Secretary.*

Dated May 15th, 1899.

I, J. T. Wann, Secretary of the Indianapolis and St. Louis Railway Company, do hereby certify that the foregoing agreement was submitted to the stockholders of the said company at a meeting thereof called for the purpose of taking the same into consideration on the (15) fifteenth day of May, 1889, at the City of Indianapolis, in the State of Indiana.

At said meeting the said agreement was considered and a vote by ballot taken for the adoption or rejection of the same. That 4,899 votes, representing 4,899 shares of stock were cast at the said meeting, all of which were cast for the adoption of the agreement, being more than two-thirds of all the votes cast at said meeting, and that the number of shares of stock of the said company entitled to vote at the said meeting was 5,000 shares.

[SEAL.]

J. T. WANN, *Secretary.*

Dated May 15th, 1889.

I, J. C. Davie, Secretary of the Cincinnati, Indianapolis, St. Louis and Chicago Railway Company, do hereby certify that the foregoing agreement was submitted to the stockholders of the said company at a meeting thereof called for the purpose of taking the same into consideration on the fifteenth day of May, 1889, at the city of Indianapolis, in the State of Indiana.

At said meeting the said agreement was considered and a vote by ballot taken for the adoption or rejection of the same. That

82,217 votes representing 82,217 shares of the stock were cast at the said meeting, all of which were cast for the adoption of the agreement, being more than two-thirds of all the votes cast at said meeting, and that the number of shares of the stock of the said company entitled to vote at the said meeting was 100,000 shares.

[SEAL.]

J. C. DAVIE, *Secretary.*

Dated May 15th, 1889.

We, J. T. Wann, Secretary of the Cleveland, Columbus, Cincinnati and Indianapolis Railway Company, J. T. Wann, Secretary of the Indianapolis and St. Louis Railway Company, and J. C. Davie, Secretary of the Cincinnati, Indianapolis and Chicago Railway Company, do hereby certify that the foregoing is a true and correct copy of the Agreement of Consolidation between the said Companies.

June 7th, 1889.

[CORPORATE SEAL.]
[CORPORATE SEAL.]
[CORPORATE SEAL.]

J. T. WANN, *Secretary.*
J. T. WANN, *Secretary.*
J. C. DAVIE, *Secretary.*

(Certificate Under Section 906, Revised Statutes of the United States.)

UNITED STATES OF AMERICA,

State of Ohio, Office of the Secretary of State:

I Charles Kinney, Secretary of State of the State of Ohio, and being the officer who under the Constitution and Laws of said State, is duly constituted the keeper of the records of articles of incorporation of all companies incorporated under the laws thereof, and the records of all papers relating to the creation of said incorporated companies, and empowered to authenticate exemplifications of the same, do hereby certify that the annexed instrument is an exemplified copy, carefully compared by me with the original record now in my official custody as Secretary of State, and found to be true and correct, of the — filed in this office on the 7th day of June, A. D., 1889, and recorded in Volume 43, Page 144, of the Records of Incorporations; that said exemplification is in due form and made by me as the proper officer, and is entitled to have full faith and credit given it in every court and office within the United States,

In Testimony Whereof, I have hereunto attached my
 395 official signature and the Great Seal of the State of Ohio,
 at Columbus, this 8th day of January, A. D. 1898.

[SEAL.]

CHAS. KINNEY,
Secretary of State.

(Endorsed.)

3.

Articles of Consolidation of C. C. C. and St. L.
 Certified copy filed June 7, 1889.

And further to maintain the issues on their part, all the defend-
 ants offered in evidence the following entry, found in Journal C
 of the Council Proceedings of the City of Cleveland, at page 62,
 under date of April 14, 1841:

"A communication was received from Anson Hayden and A. M.
 Lloyd, attorney for Thomas Lloyd, touching the legality of Bath
 St. and the adjacent lands on the north. Referred to the Judiciary
 Committee."

Also the following entry, found in Journal C of the Council Pro-
 ceedings of the City of Cleveland, at page 258, under date of April
 22, 1843:

"By Mr. Clary, petition of H. Camp for using the public land at
 the foot of the piers as a coal yard, accompanied by a resolution
 directing the Committee on Public Grounds to lease said petitioner
 the land conditionally. Mr. Nott moved to amend by authorizing
 said Committee to report, instead of leasing. The resolution was
 finally amended by striking out leasing and adding the words per-
 mitting Mr. Camp to use, etc. Adopted."

Also the following entry found in Journal C of the Council Pro-
 ceedings of the City of Cleveland, at page 380, under date of June
 26, 1844:

"Mr. Allen introduced a resolution instructing Clerk to inform
 the City Attorney of the institution of a suit in Chancery against
 the City in relation to Bath St. and requiring of the attorney to
 report at the next meeting of the Council the then state of proceed-
 ings and all other information in his possession thereto relating.
 Adopted."

Also the following entry, found in Journal C of the Council Pro-
 ceedings of the City of Cleveland, at page 429, under date of Janu-
 ary 31, 1845:

"Resolution by Mr. Stetson that in leasing lots upon Bath St. no
 lease shall be so drawn as to render the city liable to pay damages
 in case of failure of title or disturbance of the possession of lessees,
 but that in case any lessee shall lawfully be turned out of possession
 by any person or persons claiming adversely to the city, all
 396 rent shall cease from and after the lessee shall be so ejected.
 Adopted."

Also the following entry, found in Journal D of the Council

Proceedings of the City of Cleveland, at page 140, under date of May 20, 1846:

"The Mayor announced the commencement of chancery suit in the Supreme Court against the city, involving the city rights in a portion of the Bath Street property; also that a Petition was pending in the Common Pleas to vacate all the portion of the city lying north of Bath Street. Whereupon Mr. Case presented a resolution that the Common Council of the city do respectfully remonstrate against the prayer of said petitioners being granted; that the City Attorney be authorized to employ such additional counsel as he may deem expedient in defense of the rights of the city. That the Mayor be requested to lay this remonstrance before the above mentioned Court."

Also the following entry, found in Journal D, at page 221, under date of March 17, 1847:

"Petition of John G. Stockley and others, for the opening of Bath Street from river to Water Street, referred to Committee on Streets."

Also the following entry, found in Journal E of the Council Proceedings of the City of Cleveland, at page 43, under date of September 19, 1848:

"Notification from the Directors of the Cleveland, Columbus & Cincinnati Railroad Company that on the 8th instant it was resolved to take possession of the land known as the Bath Street property between the pier and Water Street, for depot grounds for said Company, was referred to select committee Messrs. Starkweather, Seymour and Hubby. Adopted."

And further to maintain the issues on their part, all the defendants offered in evidence the testimony of L. F. LOREE, as follows:

By Judge SANDERS:

Q. What is your name?

A. L. F. Loree.

Q. What is your connection, Mr. Loree, with the Pennsylvania Company?

A. I am its general manager.

Q. Is that the company which is operating the Cleveland & Pittsburgh road?

A. It is.

Q. Under a lease?

A. Under a lease, yes sir.

Q. Were you at one time connected with the Cleveland & Pittsburgh road?

A. I was. At first I was engineer of the company, and subsequently was division superintendent.

Q. When did you become engineer?

A. From 1888.

Q. As such engineer did you have charge of the property of the company so far as it pertains to the engineering department, known as the Bath Street property?

A. I did.

Q. For how long a time?

A. Until September, 1889.

Q. And from 1888 up to the present time have you been familiar with that property?

A. I have.

Q. And are you now?

A. I am.

Q. And the uses which the company is making of it?

A. Yes, sir.

Q. State to the jury what uses the Pennsylvania Company has been since 1888 and is now making of the property in contention here?

A. On the Cuyahoga river, and toward the southerly side of the Bath street tract, the Pennsylvania Company has three freight houses at which it makes delivery to the city and receives from the city merchandise business for transport. It also at one of those houses interchanges business with certain line of steamers on the lake, the Detroit and Cleveland Transit Company and the Cleveland and Buffalo Transit Company and others. Further north and adjacent to the river it has tracks upon it which makes carload deliveries to the city, and receives carload shipments from the city, and interchanges carload business with the lake lines. Upon the extreme northerly portion it has two houses used principally for the trans-shipment of flour, but used also for the trans-shipment of other merchandise. On the extreme east of the property known as the Bath street tract, it has a yard set aside for the care of the coaches used in its passenger business. The coaches are set over there, inspection made as to their condition, necessary repairs made to keep them in running order, the coaches are cleaned, the air tested, and the steam heat applied, and the usual work done at a terminal with the passenger business is there transacted. Adjoining the coach yard on the west is property on which is handled the merchandise business interchanged with certain lake lines, including the Northern Steamship Company. Still further to the west is a dock set aside exclusively for the interchange of business with passenger lines, notably the Northern Steamship Company; also a fueling dock for the fueling of vessels plying the lakes. Still further to the west is a dock for the shipment of cargo coal, and
398 connected with that are tracks for storage of coal going up the lake, and for the handling of loaded cars and empty cars in connection with the loading plant. In addition to that I might say on the southern portion of the tract are the main tracks of the Pennsylvania Company going over to their terminal on Whiskey Island, over which are handled the interchange of business with the Lake Shore, the Big Four, the Valley Railroad, and the business done on Whiskey Island.

Q. State whether the purposes to which you are so devoting this property are all of them necessary railroad uses?

A. They are, yes, sir.

Q. State to the jury what the relation of this Bath street tract, so

called, is to the Union Station with reference to the operation of trains?

A. The coach yard is used very intimately as a part of the passenger terminal facilities of the company, and forms an appurtenance of the passenger station. We occasionally use some of the tracks near the Cuyahoga river for passenger business interchanging with the lake lines, excursions.

Q. State to the jury how constantly the trackage which your company has on this tract is in use?

A. I should say its use was continuous throughout the 24 hours of the day.

By the COURT:

Q. Does that map marked Exhibit 6 fairly represent the situation about which you have been testifying?

A. I think it does.

Q. State to the jury in general terms the volume of business that the company is doing on this property?

(To which question the city objected on the ground that it seems to be immaterial to any issue in this case, except it be the question of estoppel made in the answer of the defendants; and for the further reason that the facts stated in the answers of the defendants are not sufficient to constitute an estoppel as against the plaintiff.)

Judge LAWRENCE: The question involved the answer as to the business at the time of the trial and not at the beginning of the suit. On cross examination the City went into that matter and located the tracks.

Judge SANDERS: We offer to prove the nature of the business carried on on this property, and propose to show that it is of the same nature as that which has been carried on since 1851, for the purpose of showing the use we have made of the property, for the purpose of showing the materiality of that suit to the railroad company, for the purpose of supporting the equitable estoppel we claim here.

399 The objection was overruled by the Court; to which ruling of the Court the plaintiff then and there excepted.

A. We handled in the year 1898 at the three freight houses and on the delivery tracks to the west side of this Bath street tract approximately 18,000 cars of merchandise business.

Q. 18,000 cars with respect to what business?

A. Merchandise business. We handled in 1898 approximately 12,000 cars of interchange merchandise business with the lake carriers.

By the COURT:

Q. Water carriers?

A. Yes, sir. Making a total of 30,000 cars out of 81,000 cars handled in the city of Cleveland. I figured out those percentages, if you would like to have them.

Q. Let us have the percentages?

A. It constitutes about 36 per cent. of the total merchandise business that the company transacts within the limits of the City of

Cleveland. We handle cargo and fuel coal on the Cuddy-Mullen and the fuel dock to the amount of 23,810 cars. Our total lake coal business was 41,434 cars. So that something over half of it was handled on the Bath street tract. We handle all the coach business of the railroad on this tract. We handle over the main tracks, and partially on this tract our interchange business with the Lake Shore, the Big Four and the Valley railroad; our interchange with the Lake Shore, 23,810 cars; with the Big Four, 12,126 cars; with the Valley, 5,834 cars; about 41,000 cars of interchange business. In addition to that we handle 41,434 cars of coal and 49,828 cars of iron ore, a total of 91,262. The lake coal and the iron ore constitute 53 per cent of the total business of the company in Cleveland. That was all handled over this tract. Of the merchandise business 26 per cent, was handled over this tract, so I should say in general terms three-fourths of our business here passed over this tract of ground.

Mr. LAWRENCE: The objection that we made to some of this testimony applied only to the fact that the testimony was as to the time of the trial. The Cuddy-Mullen dock was built afterwards, and so were the other docks. There were no docks there at the time the suit was brought.

Judge SANDERS: It was claimed by the city, and I suppose will be now, that notwithstanding the validity of the contract of 1849 to the extent that the city claimed it to be valid, there has been or is being made some use of this property by the railroad company that is not authorized by the contract of 1849. It is therefore proper, I take it, to show what use is being made of it and has been made of it during all the time the company has had possession.

The COURT: So far as the doctrine of equitable estoppel is concerned, the fact that you put in docks and slips after the suit was started, would not avail you any.

Judge SANDERS: No. We spent something like \$50,000.00 in 1850, which was quite a bit of money in those days.

Q. State how the property could be operated without it? I mean how the railroad company's business could be conducted without this property down there?

(Answer stricken out.)

Q. You spoke of certain uses of the property that were made in connection with the interchange of passenger business on the lakes. What lake lines do you interchange passenger business with?

To which question the City objected so far as it calls for testimony as to any matters or facts occurring since the commencement of this suit, for the reason that as to all such matters the testimony is irrelevant. The objection was overruled by the Court; to which ruling the Court the plaintiff then and there duly excepted.

A. From 1888 until about two or three years ago, when the Detroit & Cleveland Navigation Company bought their property at the foot of Superior street, all the business of the company with the Detroit line was interchanged in front of their freight depots. The general public also departed from and took the Detroit steamers at

that place. From 1888 until last year the business of the Pennsylvania Company with the Anchor Line boats took place along the Cuyahoga river frontage. They also interchanged their city business there. Now, that line is using the dock on the west side of the property, and the interchange is made at that point. In about 1896 the boats of the Great Northern Steamship Company used to come about in the open lake outside, and passengers were taken out there on a tender and put aboard. Growing out of negotiations by the Great Northern Steamship Company with the Pennsylvania Company the dock known as the Great Northern Dock was built on the west side of the property, and the interchange of business now takes place there. It is both the interchange with the railroad and any business they have with the community.

401 Q. That is the dock on the east side of the property?

A. Yes, sir.

Mr. LAWRENCE: I move to strike out the testimony of the witness as far as Bath street is concerned, as it relates to a period subsequent to this suit.

A. I said from 1888 until these periods I have named.

Q. This Northern Steamship Dock is on the east side of the property, is it not?

A. It is at the present time, yes, sir. There are other small lines, the names of which I do not now recall, with which the interchange was formerly and is now being made. There has always been from 1888 to the present time more or less excursion business interchanged between the lake carriers and the railroad company on this property.

By the COURT:

Q. Where on the property?

A. Along the Cuyahoga river. They go in on one of the tracks adjacent to the river, and the people walk over to the boat and embark there.

By the COURT:

Q. On the west side of the property?

A. Yes, sir.

Q. What are the means of access of the passenger public to these different landings?

A. They are open ways used by both foot passengers and hacks.

Q. So to get down to this Northern Steamship Dock, there is an open way on which hacks can drive down to it?

A. Yes, sir.

Q. And they are so doing during the season of navigation.

A. Yes, sir.

Q. Now, you have stated the volume of business which was done there in 1898. In 1893 and the few years prior thereto was the property used for substantially the same purposes?

A. Except as to the cargo and fuel coal business. The fuel coal business was then being transacted on the east side of the property on the Cuyahoga river. It wasn't as large in volume as it is now.

There was no cargo coal shipped on the Bath street tract at that time.

Q. Speaking in general terms, state the magnitude of the business done there in 1893 and prior thereto?

A. I should say it constituted the same relation to the entire volume of business that it does now.

Cross-examination of L. F. LOREE.

By Mr. LAWRENCE:

Q. Mr. Loree, I wish you would go to the map marked Exhibit No. 6 and point out where the coach yard is that you have referred to in your testimony?

A. (Indicating.) These six tracks and the ground covered by them.

Q. Those are the six tracks lying west of Water street?

A. Yes, sir, and these buildings (indicating).

Q. Those are seven tracks in number?

A. Six tracks.

Q. Do they all belong to the Pennsylvania Company?

A. They do.

Q. When were those tracks constructed, if you know?

A. Some of them were there in 1888, and some prior to that time, and some have since been built.

Q. Which tracks were there in 1888, the time you came into your knowledge of the property. I wish you would designate them so the stenographer can get them down in the record?

A. My recollection is that the three tracks west of the building were there.

Q. What building is that you refer to?

A. A building used by the car cleaners and repairers for doing their work, and keeping supplies, and that sort of thing.

Q. That is the structure marked yellow color on this map, and lying between the three tracks next to Water street, and the three west?

A. Yes, sir.

Q. When were the three tracks laid that now lie east of that building?

A. My recollection is not entirely clear, but I should say about 1890, between 1890 and 1892.

Q. Were they all laid at the same time?

A. No, sir; the outside track has been laid subsequent to 1893.

Q. By the outside track you mean the track next to Water street?

A. Yes, sir, the most easterly one.

Q. The other two, you think, were laid prior to 1893?

A. Yes, sir, that is my recollection.

Q. Did those tracks extend out in 1888 as far as they do now?

A. Yes, sir.

Q. What track is that which lies next west of the six tracks you have named?

A. That was prior to 1888, a track on which coal was delivered.

But since the construction of the pier it has been used as a lead track to work the freight houses.

Q. How far did that track extend northwardly?

A. To the north end of the coach tracks.

Q. When was it extended north from that point, from the north end of the coach tracks?

A. In 1897 or 1898; I don't recollect the exact date.

Q. That includes the two tracks into which this branches?

A. The two tracks constitute all the tracks north of the old tracks.

Q. When was the slip made marked on this map the
403 Northern Steamship Company?

A. By the term slip you refer to the water space?

Q. Yes?

A. The building was erected in 1897 or 1898; 1897, I think.

Q. Was that building erected by the Pennsylvania Company?

A. Yes, sir.

Q. The building and slip and docks are leased by your company to the Northern Steamship Company, as I understand it?

A. They or their agents. I am not certain in whose name the lease is made—they or their agent.

Q. Lying next west of the building marked Northern Steamship Company freight house, is a slip marked Cuddy-Mullen slip so-called?

A. Yes, sir.

Q. Was that constructed by your company?

A. It was.

Q. When? I think in the latter part of 1894 or the early part of 1895.

Q. I call your attention to a track that comes from the east and crosses Water street, crosses where they have marked a bridge, and this track curves to the north and goes out upon the east of the Cuddy-Mullen slip; when was that track laid?

A. It was laid, to the bridge it was constructed prior to 1888. From the bridge north to this point (indicating) it was in position in 1888, at the end of the coach tracks. North of that it was built at the time this slip was built.

Q. What do you mean by being in position as far north as the north track?

A. I mean it was there being used for, the delivery of coal. We had a coal yard there at that time.

Q. How many tracks has the Pennsylvania Company lying next west of that track?

A. Thirteen are shown on the map.

Q. When were those tracks laid?

A. Six or seven of them were laid about 1890; the balance were laid at the time of the construction of the slip.

Q. That would be in what year?

A. 1894 or 1895.

Q. Which six or seven were laid in 1890?

A. I couldn't point out the particular ones. The yard was originally laid out for a coal delivery yard. The tracks when the

slip was built were shifted about and new tracks were built to fill all the space. I should have to refer to some old documents to find out about that.

Q. None of those tracks, if I understand you right, were laid prior to 1890?

A. I think not; none of these tracks in here (indicating).

Q. From what point on the south and east were those
404 tracks laid beginning with 1890?

A. They were laid—taken out of this track, the most southerly track in possession of the company.

Q. Suppose you mark that track "A?"

A. Very well. My recollection is that the two tracks that were parallel to A and north of it were taken up.

Q. They think your answer is not definite enough; please make it a little more definite?

A. When we remodelled the yard about 1890 we took up two tracks parallel to and north of "A," and laid two tracks for the delivery of coal which extended northerly to Water.

Q. How many tracks were there north of the track marked "A" in 1890?

A. I think two.

Q. Lying next north of it?

A. Approximately.

Q. And parallel to it?

A. Yes, sir.

Q. Did the company have any tracks in 1890 north of those two tracks which you say were taken up in that year?

A. They had one or two tracks in the position that these tracks now are, and west of the bridge, on which coal delivery was made.

Q. Have they been taken up since?

A. Simply moved in position; they are still there.

Q. Lying next west of the twelve tracks that you spoke about a while ago, are nine other tracks extending out to the end of the pier on the west of the Cuddy-Mullen slip. Do those tracks belong to the Pennsylvania Company?

A. They do.

Q. When were those tracks laid?

A. I think two or three were laid about 1890 up to a point opposite the end of the coach yard, and the balance were laid at the time of the construction of the slip.

Q. None of those tracks were laid prior to 1890, were they?

A. I think not.

Q. Going west from those tracks and keeping north of the main tracks of the Pennsylvania Company, what tracks belong to that company?

A. (Indicating.) This group of tracks in here.

Q. Describe them a little more definitely.

A. All the tracks lying westerly and southerly of the track marked "B," and northerly of the main tracks of the company.

By Mr. CLARKE:

Q. The track marked "B" is the Lake Shore track?

A. Yes, sir.

Q. All of the tracks lying west of the track marked "B" are Pennsylvania tracks?

A. Yes, sir.

Q. When were those tracks laid?

405 A. Those tracks were all laid in their present position in 1888; the ends of some of those tracks were subsequently extended. Prior to 1888 there were a group of tracks in here (indicating) which we took up and shifted about in position as we remodeled the yard.

Q. How far did those tracks extend north at the time you came there in 1888?

A. I think approximately to a point about one-third the length of the Lake Shore freight house south of its north end.

Q. You think all the other tracks were in there prior to that time?

A. Yes, sir. Possibly there were one or two tracks extending up in here also (indicating).

Q. Lying next the Cuyahoga river and along the pier, I see a building shaded yellow and marked Pennsylvania Railroad Company Freight House; that belongs to the Pennsylvania Company, does it?

A. It does.

Q. When was that building erected?

A. The southern part, as I recollect, was built about 1892; the northern part about 1893 or 1894.

Q. And lying south of the United States custom house is a building shaded red, marked Pennsylvania Railroad Company Freight House; when was that building erected?

A. Prior to 1888. It had been in use a good many years when I came here.

Q. Would you say the same for the building lying south of that and marked Pennsylvania Freight House?

A. Yes, sir.

Q. I call your attention to nine tracks leading in a northwesterly direction towards the first building, marked Pennsylvania Railroad Company Freight House, colored red, when were those tracks laid?

A. In their present position when the yard was remodeled in 1889; they were on the ground prior to 1888.

Q. Were there as many tracks there then as there are now?

A. Yes, sir, perhaps more.

Q. Point out the main tracks of the Pennsylvania Company upon this property?

A. Three and four north of the north line of the Union Depot.

Q. Extending how far to the west?

A. Extended to a point about opposite the east end of their freight house.

Q. Explain what you mean by main track?

A. That is a question a little hard to answer. I should say a main track was one upon which the operations were conducted in a specified order under the authority of the superintendent.

Q. And you include passenger and freight tracks under that designation?

406 A. Yes, sir; tracks used by both passengers and freight. Tracks used exclusively by passengers and tracks used exclusively by freight.

Q. And the tracks you have called main tracks upon this property, are the tracks which lead from the north of the Union Depot across property extending to the bridge which crosses the Cuyahoga river?

A. On down to the yard and Whiskey Island.

Q. I will ask you when the pile bulkhead extending from a point about 125 feet east of the Cuyahoga river easterly to the pier, which lies west of the Cuddy-Mullen slip, was constructed?

A. The construction was practically completed in the early part of 1888, prior to April, 1888. The construction was completed in that year, as I remember.

Q. Has there been any extension of these grounds to the north since the year 1888?

A. You mean the land?

Q. Yes?

A. Yes, sir.

Q. Explain to the jury where the land has been extended north since 1888?

A. On this pier (indicating) and this one.

Q. Designate them so the stenographer can get them?

A. The Northern Steamship Company pier and the Cuddy-Mullen pier, and the freight house pier at this point (indicating.)

Q. By that you mean the freight house upon the government pier?

A. Lake freight house.

Q. Was the freight house of the Lake Shore & Michigan Southern Railroad Company which lies east of the track marked "B" there in 1888?

A. It was.

Q. And were these two tracks in place in 1888 leading into that freight house?

A. The house was in operation. There were one or more tracks there, but I haven't charged my memory with the operation of the Lake Shore road, and I cannot speak definitely about it.

Q. In your testimony you spoke — the public having access to the slips and docks upon this property. Tell the jury how the public has access to those places?

A. Along the Cuyahoga river people drive down in hacks and private carriages, get out and go aboard the boats, or come from the boats and take private carriages or hacks, or walk back and forth from the boat to the town.

Q. That is along the pier, is it not?

A. Yes, sir.

Q. There is an open space lying easterly of the river which is a sort of a roadway?

A. There is an open street from 40 to 60 feet in width.

Q. Lying next east of the Cuyahoga river?

A. Yes, sir.

407 Q. In what other way do the public have access to the docks and piers?

A. (Indicating.) There is a bridge at this point by which they reach the dock of the Northern Steamship Company and the dock of the Cuddy-Mullen Company.

Q. Designate that bridge so the stenographers can get it into their notes?

A. It begins at the northerly side of Water street, and is marked in yellow and brown, and extends in a generally northerly direction, and the branch to the west.

Q. Does that cross over the tracks?

A. Yes, sir, descending to a level with the ground at either end of these branches.

By Judge SANDERS:

Q. You said the northerly side of Water street; it is Front street, is it not?

A. Yes, sir.

Q. In Front street, is it not?

A. Possibly.

Q. When was that bridge constructed, if you know?

A. Prior to 1888.

Q. Are the public generally allowed to use that bridge?

A. Yes, sir. There is no watchman there.

Q. Is there any other way that the public have access to the docks or piers upon this property than what you have described?

A. As a matter of fact, the public use railroad property as though it was a public highway. They swarm all over it. These are the only ways we would like them to travel on, because we consider those entirely safe.

Q. What is the width of the bridge that you have mentioned?

A. I should say about 28 or 30 feet, with a sidewalk on the outer side which is perhaps six feet wide.

Q. Who has the control of that bridge?

A. I don't know whether I understand what you mean by control.

Q. Whose property is it?

A. It is the property of the Union Depot Company. It is maintained and repaired by the Union Depot Company.

Q. What companies compose the Union Depot Company?

A. The road known as the Big Four, the Lake Shore and the Pennsylvania Company.

Q. They are the same three companies that are occupying the Bath street lands?

A. Yes, sir.

Q. You say the public swarm over the railroad property. Do the public swarm over this property?

A. They do, yes, sir.

Q. At this time?

A. Yes, sir.

Q. For what purpose do people come on the property?

408 A. Well, our observation shows that more people walk up and down our right of way than walk on the right of way on any street of the City of Cleveland.

Q. What do you say as to this property?

A. They go out to fish, and go to loiter and transact business with the railroad companies, and to see friends on the boats coming here, and they go to transact business with the owners of the boats, and generally they are on the property. People who live on the boats go back and forth to market, and the people trading in the town go down to make sales to them.

Q. They cross over that property, as I understand you then, the same as the public generally use and walk upon railroad rights of way.

A. They go without let or hindrance whenever and wherever they want to.

Q. Do they do that just as they do over other private property of the railroad company?

A. Not entirely, because they have business with people on the property that they might not have at all at other places.

Q. But they have the same privilege of going over the land that they have over other private property belonging to the railroad company?

A. We try to prevent it as much as possible other places; we have not tried to here.

Q. Why not?

A. Because we think it is convenient to the conduct of the business that they should see the people who are there, is one reason.

Q. Mr. Loree, you had charge of filing the answer of the Pennsylvania Company and the Cleveland and Pittsburgh Company in this case, I suppose?

A. No, sir. I should say that was a matter that was under the jurisdiction of the second vice president, who has charge of the legal affairs of the company.

Q. Did you sign or swear to either of the answers; do you remember about that?

A. I do not, no, sir.

Q. Do you know what is stated in the answer of the Pennsylvania Company in this case?

A. I do not now remember, no, sir.

Q. Have you read it?

A. I don't remember ever having read it, no, sir.

And further to maintain the issues on their part, all the defendants offered in evidence the testimony of THOMAS RODD.

By Judge SANDERS:

Q. What is your name?

409 A. Thomas Rodd.

Q. What is your connection with the Pennsylvania Company?

A. I am chief engineer of the Pennsylvania Company.

Q. How long have you been chief engineer of the company?

A. About ten years.

Q. How long have you been familiar with the property in dispute in this action?

A. About the same length of time.

Q. Are you familiar with the value of improvements upon railway terminal property of the character of the improvements on the property in dispute here?

A. Yes, sir.

Q. Has your attention recently been called to the question as to the value of the improvement which the Pennsylvania Company have on the property in dispute here?

A. Yes, sir, it has.

Q. Those improvements, consisting, as appears upon the map here, of their tracks and freight houses and other improvements appearing on the map, state to the jury what in 1893 was the fair value of the improvements of the Pennsylvania Company on this property?

To which question the plaintiff objected, first, on the ground that the testimony called for is not sufficient to create an estoppel against the plaintiff in this action, and that it is irrelevant to any other issue in this case. Second, the plaintiff objects for the reason that the testimony called for includes various tracks and buildings, without designating them, and calls for an answer as to the whole.

Judge LAWRENCE: The ground of that objection was chiefly that there was no case for the application of the doctrine of estoppel, that the pleadings made no such case. Our contention is that the doctrine of equitable estoppel has no application in a case like this.

Judge SANDERS: As that would be for the Court to determine, the Court had better have the facts. We offer to prove the value of the improvements put on this property prior to the beginning of this suit.

Which objection was overruled by the Court; to which ruling of the Court the plaintiff then and there excepted, on the ground that this evidence is offered in support of the alleged acquiescence of the City pleaded as an estoppel; the logic of such plea is that when the City did not object it had a right to object. The assumption that it had a right to object embodies the assumption that the locus in quo was a public street of the city, for no other kind of control is claimed in this case. The City could not expressly authorize the putting of buildings in the street, and therefore its tacit assent
410 could not estop it. And further, it is not alleged in any of

the answers that the City did anything actively to encourage expenditures upon it by the railroad companies, or that the defendants had not all the knowledge of the situation that the City had.

A. About \$274,000.

By the COURT:

Q. Do you include in that estimate the value of the land?

Judge SANDERS: Simply the improvements, the tracks and buildings as distinguished from the lands.

Q. In that estimate you include nothing for the land, simply the property which the company had put upon the land?

A. Nothing is included for the land.

By the COURT:

Q. It is the structures on the land?

A. Yes, sir, and tracks.

Q. Since 1893 what other improvements have been put upon this property by the Pennsylvania Company?

A. The value of the improvements since 1893 amount to \$176,000.

Q. And in what do they consist principally?

A. They consist in tracks and structures and the trestles supporting some of the tracks.

Q. When were those docks built out there. What I am getting at, do you include in these expenditures since 1893 the docks that have been built?

A. They were built in 1894, 1895, 1896 and 1897.

Q. That expenditure is included in this last figure you have mentioned, is it?

A. Yes, sir.

Q. In the estimate you have given as to the value of improvements down there in 1893, and prior to 1893, have you included anything for expenditures which were made in buildings which had been destroyed by fire or otherwise, prior to your connection with the company?

A. No, sir, I haven't included those expenditures.

Q. Have you any knowledge of that except as you get it from the records of the company?

A. The only knowledge I have of those expenditures is from the records of the company and from having been informed of the existence of the improvements.

Q. You have not included anything expended in the Union Depot?

A. Nothing is included for anything expended in the Union Depot.

Q. Nor of the bridge across the river.

A. Nor of the bridge across the river.

411 Q. Do you know what the cost of the Union Station building was? Simply state the fact whether you know?

A. I don't know.

Cross-examination of THOMAS RODD.

By Mr. LAWRENCE:

Q. What do you say was the value of the improvements erected by the Pennsylvania Company prior to 1893?

A. The value prior to 1893 was \$274,000; that includes 1893.

Q. Do you say that represents the expenditures of the company, or the value of these improvements in 1893?

A. It represents the value.

Q. Did you make any estimate of the value in 1893?

A. I did.

Q. For what purpose did you make it at that time?

A. I was requested to be prepared to give the value of the improvements in 1893, and the improvements subsequent to that time.

Q. When were you requested to do that?

A. Just recently, within ten days.

Q. What I mean is, you didn't make this estimate in 1893, but you made it recently?

A. Yes, sir.

Q. How are you able at this date to determine what was the value of property in 1893?

A. From my knowledge of the property and the records of my office.

Q. Isn't it a fact that you made up your estimate here from the books of the company as to what the company had charged up against this property?

A. It is not a fact.

Q. Tell us then how you did arrive at this estimate?

A. I arrived at the estimate by knowing from our maps and records the number of feet of track on the property during 1893, and knowing the value of that class of track; and by knowing the size and area of the buildings and other structures on the property, and applying my knowledge of their value to the sizes of the structures and the character of the structures.

Q. How much of your \$274,000 is for tracks and how much of it is for buildings?

A. There are \$44,600 for tracks, and for buildings, docks and other structures the remainder to make up \$274,000, \$233,400.

Q. How much have you included for docks?

A. \$112,400.

Q. Where were those docks located?

A. They were located on the east of the government pier and along the northern line of the property abutting the water, east of the government pier.

Q. Don't you know in 1893 there were no docks along
412 the northerly line of the property?

A. I refer to what is known as the breakwater, which is a dockage to prevent the encroachment of the water on the land.

Q. Will you point out on this map the dock you refer to?

A. They extend about on the site of the buildings marked Pennsylvania Railroad Company Freight House on this map, parallel and adjoining the government pier and the building space, about 450

feet long and 170 feet wide, parallel to the government pier. They also include a portion of what is marked Pile Bulkhead, to about this point (indicating).

Q. What has become of the docks located on the site of the Pennsylvania freight house?

A. Part of them still exist, and part of them have been partially covered up, as far as the water is concerned by the land going out to the pile bulkhead.

Q. Where was the northerly line of the land in 1893?

A. I cannot say that I recollect very well about that, but I should say 100 feet or so to the south of what is marked pile bulkhead. There was some water, as I recollect it, between the pile bulkhead and the land.

Q. How much have you included in your estimate for the cost of these improvements, part of the pile bulkhead and the dock along east of the freight house and upon the site of the freight house?

A. That includes the filling, and amounts to \$112,400.

Q. What do you mean by filling?

A. All this land has been made land, so that all of the dirt that has been put in has been filled in; that is what I call filling.

Q. That didn't cost the railroad companies anything, did it?

A. I think it did, but I am not sure.

Q. Isn't it a fact that all the filling that was done there was done by the people who came down and used that as a dump during many years?

A. I can't say what was done very well prior to 1893, but there was a great deal of made land or filling made by dirt hauled down and distributed by the railroad company.

Q. In getting your estimate of the \$112,000 for the cost of the pier and filling, explain to the jury how you arrived at your amount?

A. I took the size of the old docks, and from my general knowledge of dock construction I applied what I believed to be the proper value to it, and I also applied what I considered the proper value for the filling, and added those amounts together, which gave me the value of the docks and filling.

Q. How did you estimate the value of the filling, what basis?

A. I estimated the filling to be worth about twenty-five
413 cents a cubic yard in place leveled off.

Q. Why did you estimate twenty-five cents a cubic yard?

A. Because I believed that to be the amount that would be required to place similar filling in position.

Judge SANDERS: Mr. Rodd states that he wishes to make a correction.

A. I want to correct by testimony as to the amount I gave including the filling. The filling was not included in that amount. That amount included the amount for the docks, included the docks that I spoke of first, and then the dock known as the old east pier. In stating the amount \$112,400.00, in explaining where the value of that was, I did not say it included the east pier. It does include the east pier, and does not include the filling. The filling I estimated at \$66,000.00.

By Mr. LAWRENCE:

Q. Give us the amounts that make up the \$274,000.00, as you have corrected it?

A. The tracks are \$44,600.00; docks \$112,400.00; buildings \$52,000.00; filling \$66,000.00.

And further to maintain the issues on their part, all the defendants offered in evidence the record of Proceedings of the City Council, found in Journal E at page 221, as follows:

"January 2, 1850. Claims of Wood and Willis for services in ejectment suits with the lessee of Lloyd's heirs, and arguing a case at Columbus \$250.00. Referred to Com. on Claims, with the Com. on Judiciary added."

Also the following from Journal E, page 225, under date of January 7, 1850.

"By Mr. Case: Resolved, that the Committee on the Judiciary take charge of the matter of the tax charged on certain lots in Bath street and advertised by the County Auditor to be exposed for sale on Monday the 14th of January, and that said Committee be authorized to employ counsel and take such measures as they may deem proper."

Also the following from Journal E, page 231:

"Report of same Committee" (Com. on Judiciary) "to whom was referred the resolution relative to the taxes levied on the Bath street property. That with the aid of counsel they have carefully investigated the matter and have no doubt but that the Railroad Company will settle the matter without any further expense to the City. Accepted."

Also the following from Journal E, page 233, under date of February 5, 1850; regular meeting of Council.

"By Mr. Cross: Resolved, that the Secretary of the Cleveland, Columbus & Cincinnati Railroad Company for the time
414 being is hereby appointed the agent at the office of the said Company for the management and collection of the Bath Street rents received in the leases assigned to said Railroad Company by resolution of the City Council of September 1849. Provided that said Secretary be required to pay over to the City Treasurer that portion of said rents which were reserved to the City in the agreement with said Company. Adopted."

Also the following from Journal E, page 247, under date of March 15, 1850:

"Report of Judiciary Committee to whom was referred the claims against the City for costs, in four suits, lessee of William B. Lloyd vs. The City of Cleveland, in favor of paying \$100.43, that sum being the whole amount due. Accepted and adopted."

Also the following from Journal E, page 249, under date of March 15, 1850:

"By Mr. Cross: Resolved, that an order be drawn in favor of the Sheriff of Cuyahoga County for the sum of \$100.43 for the costs taxed against the City in the four suits entitled "The lessees of Wm. B. Lloyd vs. The City of Cleveland; and that the Clerk be required

to collect of the C., C. & C. Railroad Company \$40.60, that being the costs in said suits, since the date of the agreement between said Company and the City of Cleveland. Adopted, same vote."

Also the following from Journal E. page 289, under date of May 23, 1850; special meeting:

Mr. Seymour introduced the following: "Resolved, that the Mayor be and is hereby authorized to transfer and assign in the name and behalf of the City of Cleveland, 5 shares of the capital stock of the C., C. & C. Railroad to Thomas Ewing in payment of his account against the City for legal services rendered in the suit of William B. Lloyd against the City of Cleveland. Adopted."

And further to maintain the issues on their part, all the defendants offered in evidence the testimony of FRANCIS FORD, as follows:

By Mr. CLARK:

Q. What is your name?

A. Francis Ford.

Q. You are a civil engineer and have practiced your profession for a number of years?

A. Since 1850.

Q. State whether or not you have located the lots which appear on page 67 of this book which I hold in my hand, and which is No. 3, Tax List of the City, for 1869, numbered sub-lots 21, 22, 23, 24, 6, 1 and 6—have you located those lots?

A. Yes, sir, I have.

Q. Where are they?

A. They are on the south side of Front street.

Q. Between the river and what street?

A. Between the river and Spring street.

Q. And did they include all the frontage between those points?

A. Not all of it is marked with the different numbers on them, all those numbers are marked through, and they correspond with the length of the lots fronting on the south side of Front street.

Q. Between those streets?

A. Yes, sir.

Cross-examination of FRANCIS FORD.

By Mr. LAWRENCE:

Q. What sub-division has been made that includes those sub-lots?

A. Well, the smaller lots, one, two, and six—I could not tell by the map what they were. There is six—one and six—they are on the west side of lots twenty-one, twenty-two, twenty-three and twenty-four.

Q. That is not the question I asked you. I asked you what sub-division includes those sub-lots—what subdivision are they in?

Mr. CLARK: They are not in any sub-division—it is a part of the original plat of the city.

Q. On what map did you find those marked?

A. Mueller's city map.

Q. When was it made?

A. 1890 or 1891—somewhere along there.

Q. And this is all you know about it, is what you saw on that map?

A. Yes, sir, what I saw on that map.

By Mr. CLARKE:

Q. Is this map to which you refer, a map that is used by people and engineers in locating lots in this city?

A. I think it is.

Q. And has been so used for many years?

A. I have referred to it for that purpose.

Q. And it is recognized as a standard authority by engineers?

(Objected to.)

Q. State whether or not this map to which you refer, is referred to and recognized as an authority by the engineers in this city.

A. It is, as I understand it.

Mr. LAWRENCE: What engineer has referred to it?

416 The WITNESS: Well, I have, and I have had it referred to me—referred the map to me as authority for finding those different lots.

And further to maintain the issues on their part, all the defendants offered in evidence the testimony of ALFRED CROSBY, as follows:

By Mr. CLARK:

Q. What is your name?

A. Alfred Crosby.

Q. What is your official position?

A. Deputy city auditor.

Q. Is this book I hold in my hand, marked "Ledger, 1868-'71," a record of the City of Cleveland?

A. To the best of my knowledge it is.

Q. Did you bring it from the office of the auditor?

A. Yes, sir.

Q. You found it there?

A. Yes, sir.

Q. Now, turning to pages 208 and 209, what is the statement of account that appears there?

A. It is a record of Front street paving.

Q. In what year?

A. 1869, and 1870 and 1871.

Q. What do the items represent there?

Mr. LAWRENCE: It is not necessary to take up time with that; the book itself shows.

A. Today is the first time I have seen this. It appears to be a record of the receipts from taxes, and the money paid out to the contractor, for paving Front street.

Q. Are the accounts kept with each improvement in that way, so that that would be called the Front street paving fund?

A. We do keep them so now.

Q. They were kept so then were they not?

A. I presume so.

Q. It appears so, doesn't it?

A. Yes, sir; there are other accounts of that nature.

And further to maintain the issues on their part, all the defendants offered in evidence the following entries from Ledger, 1868-1871, accounts of the City of Cleveland, just identified by the witness Crosby, page 208, showing receipts from taxes and money paid out for paving Front street:

417		Front Street.	
	Cr.		
	1869.		
Oct.	16.	Lake Shore and C., C. & I. R. Rds.....	7,809.05
Dec.	9.	C., C. & C. Railway Co.....	778.91
	18.	Levi Johnson on a/c.....	530.00
	30.	Cleveland Gas Lt. & Coke Co.....	1,460.04
	1870.		
Jan.	21.	Mary Ann Warner et al.....	447.85
	27.	William Warner, for Mary Ann Warner....	447.85
		S. C. Baldwin, for Mary Ann Warner.....	447.85
			<hr/>
			11,921.55

And further to maintain the issues on its part, defendant The Lake Shore and Michigan Southern Railway Company offered in evidence the following agreement between The Cleveland, Columbus, Cincinnati and Indianapolis Railroad Company and The Cleveland, Painesville & Ashtabula Rail Road Company:

C., C. & C. R. R. Co. to C. P. & A. and C. & T. R. R. Cos.

Agreement and lease made this twentieth day of February, A. D. 1868, by and between the Cleveland, Columbus and Cincinnati Rail Road Company party of the first part and the Cleveland, Painesville and Ashtabula Rail Road Company for itself and for the Cleveland and Toledo Rail Road Company their successors and assigns party of the second part. Whereas the party of the first part by perpetual lease from the City of Cleveland bearing date September 13th, A. D. 1849, has the right to use, occupy and lease for Rail Road purposes certain grounds lying north of Bath Street or Front Street in the City of Cleveland and Whereas by agreement the Cleveland, Painesville and Ashtabula Railroad Company now has the right to use and occupancy of four tenths (4-10) of said grounds and is the owner of four tenths (4-10) of the buildings and structures erected thereon except such grounds and structures as are occupied and owned by the

Cleveland and Pittsburgh Railroad Company. And whereas the Cleveland, Painesville and Ashtabula Railroad Company for itself and for the Cleveland and Toledo Railroad Company party of the second part in the transacting of its railroad business requires a greater proportion of such grounds and structures so that it shall have the right to occupy and use in common two thirds (2-3) and the party of the first part one third (1-3) of such grounds and structures. And whereas the party of the second part desires to run certain of its trains and cars upon the road of the
418 party of the first part. Now therefore this agreement witnesseth:

First. That the party of the first part for and in consideration of the stipulations and agreements herein contained, to be performed by the party of the second part agrees to lease and does hereby let and lease unto the party of the second part for the term of ninety-nine (99) years and renewable for a like term upon the same consideration the right to use in common with itself such an increased interest in and to all the lands it owns or has any claim to by virtue of an agreement with the City of Cleveland dated September 13th, A. D. 1849 or otherwise acquired under its Charter lying north of the north line of Front Street or Bath Street in the City of Cleveland including all the buildings thereon so that the interest in common or between the two parties shall be in ratio of one third (1-3) to the first party and two thirds (2-3) to the second party. Subject however to all the conditions, stipulations, and restrictions contained in said lease from the City of Cleveland to the party of the first part and also to all the legal rights and claims of the Cleveland and Pittsburgh Railroad Company and also the equal right to use in common or with itself the Passenger and Freight Houses and wood and water stations and appurtenances at Berea Station and also the right to use such portion of the Wood House situated south of or near Front Street in the City of Cleveland for the storage of fuel as may be required to supply the engines of the second party running upon the road of the first party and also the right to run such of the trains over the road of the party of the first part between the Union Passenger Depot in the City of Cleveland and Berea Station as the party of the second part may select so to run and also the right to the use of tracks on the lower flats (so-called in the most convenient place for both parties and long enough to hold at least twenty cars and accessible for teams for loading and unloading, also tracks south of Mahoning Bridge along or near Walworth Run for loading and unloading Oil, Live-stock and other property and sufficient for the storage of twenty cars with switches accessible to the same.

Second. The party of the first part agrees to keep its tracks, appurtenances, buildings, roadway, frogs and switches between Front Street in Cleveland and Berea Station in good order and condition at its own cost and in as good order repair and condition in all respects as the party of the second part shall at the same time keep like appurtenances, its tracks and structures between Berea Station
419 and Toledo and in case it neglects or refuses to keep its tracks, roadway, frogs and switches in good order as above specified then the party of the second part shall have the

right to put the same in good order retaining from the rents then or thereafter becoming due (as hereafter provided) a sufficient sum to pay the cost thereof.

Third. In consideration of the stipulations and grants aforesaid by the party of the first part to the party of the second part, the said party of the second part agrees to pay to the party of the first part the sum of Forty-two thousand dollars annually in equal monthly payments. For this sum the second party shall also have the right and privilege to run five trains each way daily but not to exceed sixty trains per week, Sundays excepted between Cleveland and Berea Station over the tracks of the party of the first part. Should it run more than that number it shall pay at the rate of Six dollars for each and every train in excess passing either way over the road aforesaid. And should it run a less number of trains than as aforesaid the sum of Six dollars shall be deducted for each and every train less than the number aforesaid and for each locomotive it may run singly between Cleveland and Berea Station the sum of One dollar and fifty cents shall be paid. The payment aforesaid shall be made on or before the fifteenth (15th) of each month for the privileges enjoyed by the party of the second part for the previous month and which shall cover the use of all grounds and buildings as above stipulated lying north of Front Street in the City of Cleveland and the wood house south of and near Front Street and the tracks between Front Street and Berea Station including the repairs thereof and passenger and freight houses wood and water stations and platform at Berea Station.

Fourth. After the expiration of five years from the date hereof the party of the second part has the right by giving one year's notice in writing to the party of the first part to discontinue the running of its trains over the Road of the party of the first part between Cleveland and Berea Station in which event for the privileges thereafter to be enjoyed on the premises in the City of Cleveland and north of Front Street as hereinbefore specified the second party agrees to pay to the first party such sum as may then be agreed upon between them. In case they cannot agree, the fixing of such sum shall be referred to Arbitrators each party choosing one and the two thus chosen to choose the third, in case either party refuses or neglects to choose such Arbitrators after having thirty days' notice in writing, so to do then the other party may choose two and the two thus chosen may choose a third and the decision of the Arbitrators or a majority of them in either way chosen shall be final and binding upon the parties.

420 Fifth. In case the party of the second part neglects or refuses to pay the rents herein agreed by it to be paid to the party of the first part for sixty days after the same shall have been due and demanded or in case of the persistent violation of any of the provisions herein contained by it to be performed after receiving written notice of such violation, such violation to be ascertained by arbitration as hereinafter provided, then the party of the first part at its option may terminate this lease and agreement.

Sixth. The party of the first part shall have the right to run its

trains and engines over the road of the party of the second part between Cleveland and Berea Station when its own road is obstructed between Cleveland and Berea and the payment therefor shall be the same as the party of the second part pays the party of the first part for like service.

Seventh. The trains of either party while on the road of the other party shall be subject to all rules and regulations governing the movement of trains on that road and subject to all laws, ordinances and regulations of the State of Ohio or of municipal corporations regulating the movement of trains. Trains shall not be run at greater speed than the average rate adopted on the Road to which the same belongs.

Eighth. In the event of damage to persons or property by the trains of either party when on the road of the other or by the carelessness, neglect or misconduct of its employees or by collision between the trains of the two parties such damage shall be paid by the party at fault. When it cannot be determined which party is at fault or when it is probable that one party is as much at fault as the other the damages shall be borne equally between the parties provided that neither party shall be liable to the other or to third persons for any damages occasioned by its trains running off or being thrown from the tracks of the other party unless the same may be caused by collision of the trains of the two parties in which case the damages shall be adjusted as hereinbefore provided.

Ninth. Neither party shall be liable to the other for damages caused by the detention of trains, persons or property by reason of accidents or causes over which it has no control.

Tenth. The parties hereto mutually agree that they will immediately commence the construction and will complete a freight house east of the present one and north of the line of Front Street in the City of Cleveland and that the cost of the same shall be borne one third by the party of the first part and two thirds by the party of the second part and the use including the old freight houses shall be in the same proportion and in the most accessible and convenient manner to reach.

421 Eleventh. All further improvements required for joint use upon the leased premises north of Front Street shall be borne in proportion of one third by the party of the first part and two thirds by the party of the second part and in case improvements are required by one party and not by the other the party so requiring shall have the right to make such improvements at its own expense and have the exclusive use of the same provided that such improvements do not interfere with the use and occupancy of grounds buildings or tracks set apart for the use of the other party or which it may require the use of in common and provided further that the party not requiring such improvements may have an equitable proportion of ground set apart for its use to be located as the parties may mutually agree.

Twelfth. The cost of repairs and maintenance of tracks, buildings and structures used in common situated upon the leased premises north of Front Street shall be borne by the parties in proportion to

their use by each. The cost of repairs and maintenance of buildings and structures which shall include freight and passenger houses, wood and water stations, platforms, frogs and switches connecting the tracks of the two parties and targets at Berea Station shall be borne by the two parties in equal proportions, the cost and expense of Agency and other necessary expenses in carrying on the station at Berea shall be borne by the parties in equal proportions so long as the same may be continued as a joint agency.

Thirteenth. It is mutually agreed by each of the parties hereto that they will when required take freight and stock cars for the other party without unnecessary delay to any of their side tracks within the limits of the City of Cleveland to be discharged or loaded and return the same to the tracks of the party sending them without injury (damage by fire excepted) for the sum of One dollar for each car so handled or at the rate of fifty cents each way, this is to include the hauling of any cars to and from the tracks of the C. & M. and A. & G. W. Railroads.

Fourteenth. The connections of the tracks of the parties shall be made east of the present passenger and freight houses at Berea Station.

Fifteenth. To avoid competition in traffic west and south of Cleveland between the parties hereto an imaginary line is hereby agreed upon running from Cleveland west to Kansas City midway between the roads of the party of the first part. The Bellefontaine Railway Company, the Terre Haute and Indianapolis Railroad Company,

422 the St. Louis, Alton and Terre Haute Railroad Company, and the Pacific Railroad Company of Missouri on the south and the Roads of the Cleveland & Toledo Rail Road Company, the Toledo, Wabash and Western Railway Company, the Hannibal and St. Joseph Railroad Company and its connecting Roads on the north; south of said line the territory shall be regarded as belonging to the party of the first part and north of it to the party of the second part and neither party shall exercise any influence directly or indirectly to procure business going into or coming from the territory of the other party except at local stations situated on the line of the Sandusky, Dayton and Cincinnati Rail Road which shall be considered as territory belonging to the party of the second part and except at local points situated upon the Road of the Pittsburgh, Fort Wayne and Chicago Rail Road Company which shall be regarded as territory belonging to the party of the first part provided however that the party of the first part reserves the right to perform and carry out the contract existing between it and the Pittsburgh Fort Wayne and Chicago Railway Company until such time as the same can be terminated by the terms thereof if so required by the party of the second part, said contract by its terms may be terminated by giving one year's notice after April 20th, 1868.

Sixteenth. It is further agreed that until said contract is terminated and while the first party continues to do business over and in connection with the Pittsburgh, Fort Wayne and Chicago Railway the second party may in like manner do business south of the line of the Bellefontaine Railway.

Seventeenth. To avoid litigation the parties agree that in case of a difference of opinion arising as to any questions embraced within the terms of this agreement they will refer the same to Arbitrators experienced in railway management and to be chosen by each of the parties hereto, in case the two so chosen cannot agree they shall choose a third person of like experience and the decision of a majority of those so chosen shall be final and binding on the parties. This has reference to article fifth as well as to all other obligations and stipulations contained in this lease and agreement.

Signed sealed and delivered the day and year above written by order of the directors and with the approval of the stockholders.

[CORPORATION SEAL.]

GEO. H. RUSSELL,
Sec'y Clevd., Col. & Cin. R. R. Co.
 L. M. HUBBY,
President C., C. & C. R. R. Co.
 GEO. B. ELY,
Sec'y C., P. & A. R. R. Co.
 A. STONE, JR.,
President for the C., P. & A. and C. & T. R. R. Cos.

423 (U. S. Int. Rev. Stamp \$6.15.)

Received March 9th, 1868.

Recorded March 13th, 1868.

BENJAMIN LAMSON, *Recorder.*

THE STATE OF OHIO,

Cuyahoga County, ss:

I, J. C. Siegrist, County Recorder of the County of Cuyahoga aforesaid, in whose custody the land records of said county are required by the laws of the State of Ohio, to be kept, do hereby certify that the foregoing copy is taken and copied from the records of said county, as appears on page 102 in Vol. 2 of Leases, and that said foregoing copy has been compared by me with said original record, and that the same is a correct transcript thereof.

In testimony whereof, I have hereunto subscribed my name and affixed my seal of office, at the Court House, in the City of Cleveland, this 29th day of Dec. 1898.

J. C. SIEGRIST,

[SEAL.]

County Recorder,
 By MAURICE MASCHKE,
Deputy Recorder.

(Rev. Stamp, 10c.)

(Endorsed:) Certified Copy of Record of Lease from C. C. & C. R. R. Co. to C. P. & A. and C. & T. R. R. Cos. Original received for Record. March 9th, 1868 at — o'clock — M. Recorded March 13th, 1868, in Volume 2 Leases, Page 102, Cuyahoga County Records. Benjamin Lamson, Recorder.

And further to maintain the issues on their part, all the defendants offered in evidence the testimony of JOHN C. WILLIAMS, as follows:

By Mr. CLARK:

Q. What is your name?

A. John C. Williams.

424 Q. You reside in this city?

A. Yes, sir, I do.

Q. And are a civil engineer?

A. Yes, sir.

Q. And have practiced your profession for how many years?

A. Well, I commenced in 1849; with the exception of about seven years, I went into another business.

Q. What official position did you hold between the years 1860 and 1870, with the Cleveland & Toledo Railroad Company?

A. I was chief engineer of it, sir.

Q. You may state whether or not, as such chief engineer you had charge of the construction of the sub-structure for the bridge over the Cuyahoga river, near Front street, constructed for the Cleveland & Toledo Railroad, near Front street, in the City of Cleveland?

A. I had, sir.

Q. Now, when was that constructed?

A. That was commenced in 1866 and finished in 1867.

Q. You may state whether or not the sub-structure is still in use for the present bridge?

A. I believe it is; I don't know whether there has been any changes made since then; of course there might have been; there has been increase there, and expense that I have heard of, but I—

Q. What is the fact as to what was put there by you being still there?

A. That is still there, sir.

Q. Now, you may state, if you will, to the jury, what the cost of that sub-structure was, at the time it was put in?

A. My memory of it was seventy-five thousand dollars for the sub-structure. To verify it I went to the Lake Shore office yesterday—

Q. Was seventy-five thousand dollars the cost of it?

A. If I was going to testify to it I could tell a little—I examined the records.

Q. State to the jury the cost of this sub-structure, as you now know it, your recollection being refreshed by examination of records, or by consulting any sources of information that you might have?

(Objected to.)

The COURT: I think this is rather broad; it calls for hearsay.

Q. Strike out the last clause. I want your recollection?

A. My recollection is seventy-five thousand dollars, sir; I haven't taken pains to remember the details.

The COURT: What was the date of the building of that structure?

The WITNESS: It was built in 1866 and 1867; it was commenced in the fall.

And further to maintain the issues on their part, all the defendants offered in evidence the testimony of HARRY FULLER, as follows:

By Mr. CLARK:

Q. What is your name?

A. Harry Fuller.

Q. You reside in this city?

A. Yes, sir.

Q. You are in the employ of the King Bridge Company?

A. I am.

Q. In what capacity?

A. Civil engineer.

Q. How long have you been in the employ of that company?

A. As an engineer I have been employed fourteen years, in the employ of the King Bridge Company.

Q. You may state whether or not your duties are such that you are called upon to make estimates of the cost of iron bridges?

A. For the past four years almost my whole duty has been to design structures, prepare estimates of costs, and superintending construction in the field, of all kinds of structures, swing bridges, build-ings, and structures of various kinds and character.

Q. You may state whether or not you have examined the railroad bridge across the Cuyahoga river, used by the Lake Shore and Pennsylvania Companies, near Front street, in this city, and the plans of it, with a view to determining accurately its character?

A. I have.

Q. You may state whether or not you have the means of determining the cost of that structure, in the year 1893?

A. I have means.

Q. What was the fair value or cost of that structure, in 1893?

A. From an approximate estimate made by myself, I would say that the cost of that structure in 1893, would be \$51,500.00.

And further to maintain the issues on their part, all the defendants offered in evidence the testimony of DANIEL M. ALVORD, as follows:

By Mr. CLARK:

Q. What is your name?

A. Daniel M. Alvord.

Q. Where do you reside?

A. Collinwood, nine miles east of this city.

Q. You are in the employ of the Lake Shore railway, and have been for how many years?

A. Since September 15th, 1860.

Q. Calling your attention now, to the overhead bridge near the foot of Water street, leading over a number of tracks, with provisions for descending travel both toward the lake and to the west, you may state whether or not you know when that bridge was built—in what year?

A. 1873.

Q. And has it been in use ever since?

A. Yes, sir.

And further to maintain the issues on their part, all the defendants offered in evidence the testimony of GEORGE H. BABCOCK, as follows:

By Mr. CLARK:

Q. What is your name?

A. George H. Babcock.

Q. Do you reside in this city?

A. No, sir.

Q. Where do you live?

A. Port Clinton.

Q. You are in the employ of the Lake Shore and Michigan Southern Railway Company?

A. Yes, sir.

Q. And have been for how many years?

A. Twenty-nine years—since 1870, in May, I came here.

Q. Upon what were you employed in the years 1872, 1873 and 1874?

A. Bridges.

Q. You may state, if you know, when the overhead bridge which is constructed near the foot of Water Street and leading over the various tracks there, was built?

A. It was built in 1873.

Q. Prior to the construction of that bridge, what is the fact as to there being a grade crossing somewhere near the foot of Spring street, nearly opposite the front of Spring street?

A. Nothing only a plank crossing across the tracks.

Q. And before the construction of this bridge, how did the people get in to the freight station to get freight or coal?

A. They went across the tracks where they were planked.

Q. Near Spring street?

A. Yes, sir.

Q. You may state how long after the construction of this bridge it was before that planking was taken up and travel ceased across there?

A. I couldn't tell that.

Q. Was it long after?

A. No, I don't think it was. I think they took the crossing up soon after the bridge was completed. I think the bridge was completed about October—sometime in October.

Q. And the planking was taken up soon after that?

A. Yes, sir.

Q. And how has the travel been from that time to this?

A. It has been across that bridge.

Q. People going into the freight station and having business down there?

A. They have been going across the bridge.

Q. What was it put there for?

A. That was what it was put there for.

427 And further to maintain the issues on their part, all the defendants offered in evidence the testimony of FRANCIS FORD, recalled, as follows:

By Mr. CLARK:

— You stated yesterday that you were a civil engineer. What is your age?

A. I was 70 the first of last May.

Q. You reside in this city?

A. I do, yes, sir.

Q. When did you first go into the employ of the Cleveland, Columbus & Cincinnati Railway Company?

A. 1850.

Q. And how long were you in its employ?

A. From that time until 1880, with the exception of two years—1851 and 1852.

Q. And in what capacity?

A. As assistant engineer for ten years, up to 1860, and chief engineer from 1860 to 1880.

Q. You may state whether or not, in the discharge of your duties, both as assistant and as chief engineer, you had to do with the property that is in dispute in this case, lying immediately north of Front street, between that and the lake, and Water street upon the east, and the Cuyahoga river upon the west?

A. I had.

Q. I now exhibit to you an ancient map—I believe you procured it for me—and I will ask you where you procured it?

A. From the Lake Shore Railroad office.

Q. You may state whether or not you are familiar with that map as chief engineer of the Big Four road?

A. Yes, I am familiar with the map, as it represents the property and the improvements upon it.

Q. You may state whether it is a correct representation of the situation there, with respect to the water, in 1851—the water lines?

A. I believe it is.

Q. And is it a correct representation relative to the location of the various buildings which appear upon it.

A. It is.

Mr. CLARKE: Now, gentlemen, I would like to use a blue print of that map, in the further testimony. This will fall to pieces, I am afraid.

Mr. LAWRENCE: We would like to keep that here.

Mr. CLARKE: Oh, we will keep it here, but it is ready to fall to pieces, and I want to use the blue print. We will have this original map identified and marked, your Honor. (Ex. 13.)

Q. Now, Mr. Ford, will you step down here before the jury
428 (witness does as requested). Now, gentlemen of the jury, you are looking toward the lake. Here is the south line of

Front street (indicating on map), as it appears upon the map; then 132 feet north of that is this line indicated upon the map by a fine black line. Now, Mr. Ford, what is this blue shading (indicating)?

A. That is the line of docks—the docks and the water; the water line.

Q. What is indicated by the blue shading which appears first east of the pier on the river, and which extends down nearly to the C., C., & C. Freight Station, so marked, and to the round-house, as they appear upon this map?

A. That is the edge of the water in 1851.

Q. Does that represent correctly—does this blue shading represent correctly the water line as it was in 1851?

A. It does.

Q. Here is marked, shaded in yellow, a square, "C. C. & C. Freight Depot"—what does that represent?

A. That represents the wooden freight house of the C., C. & C. Road.

Q. When was that built?

A. That was built in two different parts. The first one hundred feet of that, on the west end, was built in 1851.

Q. And when was the next portion of it built?

A. The balance of it was built in 1852 or 1853; I am not certain as to that.

Q. Where did the south side of that building come to with reference to the one hundred and thirty-two foot line?

A. It came almost up to it.

Q. Passing now to the east, and nearly opposite Spring street, we have indicated upon the map first, a round-house, marked "C., C. & C. Engine house"—what was that?

A. That was a brick engine house where the C., C. & C. road kept their engines and turn-table.

Q. When was that built?

A. That was built in 1852, I think, 1852 or 1853.

Q. And immediately north of that appears a square shaded in yellow, marked "Blacksmith shop"—what does that represent?

A. That represents the blacksmith shop where they did the blacksmith work on the locomotives and cars.

Q. When was that built?

A. I think that was built in 1854.

Q. Immediately east of this engine house appears a yellow shaded, marked "Machine shop"—what was that?

A. That was a brick machine shop—the first section.

Q. When was that built?

A. That was built in 1852, I think.

429 Q. And immediately east of that comes the "C. & E."—what was that?

A. The Cleveland and Erie engine house. That was a brick engine house used by the Lake Shore Road.

Q. And when was that built?

A. That was built, I think, in 1854.

Q. Where, with reference to the 132-foot line, did the south line

of these buildings, the C., C. & C. engine house and machine shop and the C. & E. Engine house come?

A. Just about on the south line—the south line of these buildings ran to the north line of Bath street.

Q. The 132-foot line?

A. Yes, sir.

Q. Judge Phillips wants to know how it comes that some of those buildings that appear on this map were built later than 1851, and yet they appear here?

A. The outline of the map was made in 1851, and these buildings were put on as they were erected afterwards.

Q. And from your recollection, this map is a true representation, is it, of the water line and the location of these buildings?

A. Yes, sir.

Q. Now, immediately north of the building marked "C., C. & C. Freight Station," comes another square shaded in yellow, and marked "Iron Shed"—what does that represent?

A. Well, sheds for sheltering freight.

Q. About when was that erected?

A. That was erected about the same time that this building was here—that is, the freight station. I could not say exactly that it was to shelter freight that was taken off from vessels, to be—

Q. Was it built prior to 1855?

A. Oh, yes, yes.

Q. Now, immediately north of that is another yellow shading marked "C. & P. R. R. Co." and "C. & P. Freight Depot"—what does that represent?

A. Freight houses that were built there by the C. & P. Road—the Cleveland and Pittsburgh Road.

Q. When were they built?

A. They were built in 1851 and 1852.

Q. Now, is it the fact, as appears from this map and the blue shading, that this C. & P. Freight Station was constructed over the water—a large part?

A. A portion of it was, not all, the first freight house, the south one—this one represented in yellow here (indicating) was built—it was partly filled there with sand, and I could not say whether it was built—had the pile foundation under it, or not, but I think it had.

Q. The north half was all upon piles, was it?

A. Yes, this was (indicating), and the next building to
430 that freight house, at the time of the date of this plan, or very soon afterwards, was the elevator which belonged to the C. & P. Road.

Q. Was that on piles?

A. Yes, that was on piles.

Q. Now, following this blue line, it would seem that the blacksmith shop to which I have called your attention, was all built out beyond the south line of the water—how is that? Is that a fact?

A. Yes, it was built on piles.

Q. And how about the engine house—the C., C. & C. Engine house?

A. That was built on piles, and the tracks, the engine pits, were built on piles.

Q. Is that the engine house referred to by some witness as the one through which an engine ran and went into the lake?

A. Yes, sir.

Q. And following this blue line, it would seem that the C. & E. engine house was built over the water; how is that?

A. I don't recollect about that.

Q. But from the map it would be a fact, would it not?

A. Yes, sir.

Q. Now, here, further to the north is a square shaded yellow and marked "C., C. & C. Freight Depot"; what was that?

A. That was a brick building, a freight depot.

Q. When was that erected?

A. The first portion was erected in 1852, and it was built in two different sections—it is all the same structure; the second part was built in 1853 or 1854; I am not certain about that. The first part was built in 1852.

Q. What is the fact as to that being located far out in the lake at that time?

A. It was entirely in the water.

Q. And what was the distance from the north line of Front street, or from the water line immediately north of Front street, to this pier freight station?

A. It was four or five hundred feet; I could not tell exactly.

Q. How was that built, upon piles?

A. That was built entirely upon piles.

Q. There seems to be upon this map red and black lines indicating railroad tracks leading up from the east to this pier freight station—were they put in at the time the building was erected?

A. There was one in at the time of the building of the house and another one was laid in there in 1854.

Q. And how was it as to their being built upon piles?

A. Those were all built upon piles.

Q. And what do you say as to these tracks represented by the yellow lines, and which lead out to the C. & P. freight station, and to the land immediately north of it? How were they constructed?

A. Those were all built upon piles.

Q. Now, calling your attention to the yellow shading, marked "C., C. & C. Passenger House," and "C. & P. Passenger House and Dining Saloon and Repair Shop," grouped here, almost opposite the end of Spring street; what building were those?

A. Those are for the passenger depots for the C., C. & C., C. and E., and C. & P. Roads.

Q. When were they constructed?

A. They were built in 1853.

Q. How far was the southerly line of this passenger station north of the water line?

A. Oh, it was 200 feet.

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Q. And how far was the northerly end of these buildings from the water line?

A. Those were—the end of the dock was about a thousand feet from the water line.

Q. What is the fact as to those buildings, the passenger station and the dining room and the repair shop being upon piles?

A. They were all upon piles—all those buildings.

Q. And the dark lines and yellow lines leading from the east into these passenger stations, indicate tracks, I believe?

A. Yes, the two blue lines are the Cleveland and Erie and the two yellow lines are the Cleveland and Pittsburgh at that time.

Q. Now, these tracks that you have indicated as leading into this passenger station from the east, how was it as to their being built upon piles?

A. They were all on piles.

Q. And now, there seems to be dark lines and yellow lines leading from the east, in a straight line, out to the C., C. & C. freight station, or a little north of it—there seems to be two or three of them, and immediately north of the blacksmith shop—how is it as to their having been constructed upon piles?

A. They were all built on piles.

Q. When were those put there?

A. Two of those were there as early as 1851.

Q. And you may state whether or not tracks have been in substantially that location ever since, and in use?

A. Yes, sir, ever since, and they are there today.

The COURT: How was the situation as to piling changed, and when was it done? It is now not on piles, but on solid ground?

The WITNESS: It was filled in and raised above the piles, and the tracks were laid on the ground.

The COURT: When was the filling in commenced, and how was it done; was it done by the railroad companies?

The WITNESS: No, it was done partially by the railroad companies and partially by citizens with the waste from the city, digging cellars and grading streets.

Q. When that waste material was brought down there, how was it handled? By the railroad companies?

A. They took care of it; they kept dumpers there to push it down and level it down and put it where they wanted it.

Q. They invited the people to bring that kind of stuff there, did they?

A. Oh, yes.

Q. And how was it as to the railroads putting in great quantities of stone and the like there? Did you, as chief engineer, have large quantities put in there?

A. Before I left the road in 1880 I put in stone from about this point, about midway of that passenger depot, clear back here to this end of the depot (indicating); we brought it from Berea; we put breakwater stone in there; we ran a train expressly for that purpose for three winters.

Q. How many carloads did you put in there?

A. I never kept any accurate account of it, but I should say that I put a thousand earloads in there.

The COURT: That is all solid ground there, isn't it?

The WITNESS: Yes, sir, it is all solid.

Q. Now, going back to these tracks that you say extended from the old C., C. & C. Railroad out on the pier, I believe you said those were first laid in 1851 and 1852 and the others in 1853 and 1854?

A. Yes, sir.

Q. Are those tracks there now substantially as they were laid then?

A. Yes, sir, they are there today.

Q. How about the C., C. & C. Freight Depot; is that standing now?

A. Yes, sir, it is standing now and is used every day.

Q. When was this passenger station which we have indicated upon the map torn down?

A. I should think about 1873 or 1874, somewhere there; I cannot say exactly about that; I don't know but what it was later. I cannot recollect exactly about that.

Q. That was used until the Union Passenger Depot was built?

A. Yes, the Union Passenger Depot was built in 1865?

Q. Now, here appears a curved red line leading from west of Spring street down to the Union Passenger station—what does that represent?

A. That was a line located—I located it myself while I was assistant engineer, in the fall of 1857 or 1858; it represents a freight connection between the C., C. & C. and the Cleveland and Erie Road.

433 Q. That track was constructed by the Big Four Road?

A. Yes, sir, by the Big Four Road.

Q. And has there been a track in substantially that location ever since?

A. Yes, sir.

Q. And is now?

A. Yes, sir.

Q. Here, now, are other lines of track, indicated by red lines, running straight north from a point a little west by Spring street, up to the old passenger station; when were those tracks put in?

A. Those were built in there in 1852 and 1853.

Q. And you may state whether tracks have been maintained in substantially that location ever since?

A. They have.

Q. It would seem that those tracks extended clear through the old passenger station and out into what is called the repair shop. Now, when were those put in? About the same time?

A. About the same time—they were all put in about the same time.

Q. And have tracks been maintained there by the Big Four from that time to this?

A. Yes.

Q. And here seems to be another red line leading from a point a

little west of Spring street, curving to the west for a little distance, and then by reverse curve up to the old pier freight house—when was that connection put in, if you know?

A. That was built there in 1852 or 1853.

Q. And has a track been maintained in substantially that location ever since?

A. Yes, sir.

Q. And there seems to be also four red lines leading upon a curve from a point a little west of Spring street up to and into the old freight station marked "C. C. & C. Freight Depot," and immediately to the north of it; when were those connections put in, if you remember?

A. Some of these tracks were put there in 1850, and some of them in 1851 and 1852.

Q. What is the fact as to tracks having been maintained in those locations ever since?

A. Yes; they have been maintained there all the time; changed a little for the new building; the freight house.

Q. And now you have given us, or have already stated that the first hundred feet of this C. C. & C. freight house was built along in 1851, and a year or two after an extension of it, and later on there was another extension built to the east?

A. There was a building in 1869—a large brick freight house, in connection with the wooden part in the rear.

Q. And what length was that addition?

A. That was 480 feet long.

434 Q. And does that extend down nearly to the west line of Spring street?

A. It extends down to those tracks, very near to those tracks.

Q. By "those tracks" you mean to those that run into the old passenger station?

A. Yes; not quite—they left room to pass in between here (indicating).

Q. And has that station been maintained there ever since, and is it there now?

A. It is there now; yes.

Q. Immediately south of what we have called the C. C. & C. freight depot, and the pier, appears a white streak between two lines, extending in varying width clear through to the north of the old passenger station; what does that represent the location of?

A. The bulkhead.

Q. And by "bulkhead" what do you mean?

A. A protection from the lake against the improvements on that side of it.

Q. Of what was that constructed?

A. It was built with piles and timbers.

Q. And how? Describe the character of its construction?

A. Well, the piles were driven down, the outer row were close piles, a tight row of piles, and the inner row not tight, and then timber laid on top of the piles and bolted together—the timber to the inner row of piles.

Q. And stone filled in?

A. The stone was filled in afterwards. On this part of it—

Q. That is the part between the pier and the pier freight house?

A. Yes; that was built wider and was intended for a driveway in connection with this freight house.

Q. You say this bulkhead to the east of the pier freight house was built wider. Was that used for a drive to the pier freight house?

A. Yes, sir; that was the purpose.

Q. From that early time?

A. From that early time; yes, sir.

Q. And how was this white shading here to the west of the passenger station; was that a driveway also, upon piles?

A. That was a drive, and also an approach to the passenger station for baggage and such work in connection with the passenger business.

Q. I believe the fact is now, that the bulkhead, or protection from the lake, is to the north of this pier freight station, is it not?

A. Yes; it is out one hundred and fifty feet from the north end of this building—away out here (indicating).

Q. By "this building" you mean the old pier freight house?

A. Yes; the freight station.

Q. And who put in that bulkhead, the railroads?

A. Yes; the railroads put in the portion of it on what
435 they called their territory—I mean the C. C. & C. and the Lake Shore built that.

Q. And the C. & P. built the part on the west end?

A. Yes, sir; they built the west end.

Q. This westerly part has been—how has that been treated, as C. & P. occupation, rather?

A. Yes, sir.

Q. From the earliest times?

A. Yes, sir.

Q. Down here (indicating) seems to be a white shading surrounded by blue, marked "C. & P. R. R. Co. Coal Dock;" do you remember when that was put in?

A. I don't recollect; that was C. & P., and I had nothing to do with it in connection with my work.

A JUROR: How many feet is it from the original water line to the present water line?

The WITNESS: It is about eleven hundred feet to the end of these new docks that are not represented on this map.

Q. Upon this map there appears to be blue shadings of various forms, south of the first bulkhead that was put in, and between that and Front street; what does that blue shading in those various shapes represent?

A. The blue shading is on the line of the docks that were built on the three sides; it was water at that time.

Q. Do you mean, then, that after the building of the pier freight house and passenger station, and these tracks leading to them, that there was still a large area of water south of this bulkhead?

A. Yes, sir.

Q. People used to swim in there, and fish, didn't they?

A. They fished in there, but it wasn't a very good swimming hole; there used to be a good deal of garbage put in there.

Q. These buildings that you marked "C. C. & C. Engine House," and "C. & E. Engine House," and "C. & O. Engine House," they were torn down?

A. Yes, sir.

Q. When were they torn down?

A. In the latter part of the seventies; I don't know just when.

Q. They were there from 1852 or 1853?

A. To the seventies; yes, sir.

Q. Referring again to this C. C. & C. freight station, the old Bath street station, was that built upon piles?

A. Yes, sir; the first one hundred feet was built on piles.

Q. That is, the first part of it that was built?

A. Yes, sir.

Q. Judge Phillips asks if only the north side of it was built on piles?

A. No; the south side, too. The piles are there today.

436 Q. The first one hundred feet was the west end, next to the river?

A. Yes, sir.

Q. I think I did not ask you as to the black line indicating a track leading from the east, coming out single to a point opposite what is marked "Stockley's pier" and then dividing and running single a short distance, and then becoming double and running west to the tracks, which you have called "Big Four tracks," and then continuing out to the pier freight station, when was that track first laid substantially in that location?

A. About 1853.

Q. And has been maintained ever since?

A. Yes, sir.

Q. And is there now?

A. Yes, sir; the Lake Shore come in here to the freight depot.

Q. The buildings now upon this ground in controversy, that are owned in common by the Big Four and the Lake Shore, are first, the building immediately north, the south side of which extends down to the 132-foot line on Bath, now Front street, and marked "Freight Depot, C. C. C. & St. L. R. R. Co. and L. S. & M. S. R. R. Co.," the old pier freight station, shaded here in yellow and marked "L. S. & M. S. Freight," another building of irregular shape, shaded yellow, and marked "coal shed;" an overhead bridge shaded a slate color and marked "Bridge," and a round-house shaded red and marked "C. C. C. & St. L. R. R. Round-house;" you may state whether or not you have the means of knowing the value of the improvements upon that property, including the buildings which I have just indicated, but exclusive of the round-house, including the value of the tracks laid there and maintained by the Big Four and the Lake Shore Companies, including the value of all the piling done by all three companies, and the filling?

A. I have made an examination in detail.

Q. You may now state what the value of all those improvements was in 1893; that is, the buildings that are there at present.

Mr. LAWRENCE: I wish to enter my objection upon the record, for the same reason as heretofore stated.

(The court overruled the objection; to which ruling of the court the plaintiff, by counsel, then and there excepted.)

A. I have the figures down here. I made a valuation of those improvements; \$532,367.

Q. Does that include all these buildings (indicating), and the filling?

A. That does not include the engine house nor the passenger depots and shops.

Q. Now, have you the means of knowing the dimensions of the original passenger station which you have pointed out upon
437 the old map as located nearly opposite Spring street, the dimensions of it?

A. I have those; I took those dimensions from the map, and I know that the map represented the correct dimensions of the buildings.

Q. What were the dimensions of that passenger station, if you have them?

A. The passenger station on the C. C. & C. side——

Q. That is, the side extending north and south?

Mr. CLARKE: Gentlemen, do you object to the use of that blue print for the purpose of pointing out where those stations were?

Mr. LAWRENCE: No.

Q. What are the dimensions of the C. C. & C. part marked upon this blue print "C. C. & C. Passenger House," and it is so marked on the original?

A. 361 feet long and 118 feet wide.

Q. And what are the dimensions of this portion of it marked "C. & P. and C. & E. Passenger?"

A. I don't recollect the exact dimensions of that, but it is a little longer.

Q. Do you remember the dimensions of this dining saloon?

A. 220 feet by 30 feet.

Q. And what are the dimensions of this repair shop immediately to the north?

A. 250 feet long——

Q. If you have not the figures in mind, you can turn to them?

A. I have the dimensions of that, but I have forgotten it now; 250 feet long by 62 feet wide; that is the repair shop.

Q. What are the dimensions of this building marked on the map "C. C. & C. Freight Depot," which we have called the pier freight house?

A. That is 397 feet long by 85 feet wide.

Q. What are the dimensions of the building as it now stands, called "Freight Depot, C. C. C. & St. L. R. R. Co.," and "L. S. &

M. S. R. R. Co.," immediately north of and extending down to the 132-foot line?

A. The brick house is 482 feet long by 80 and a half feet wide; the wood part is three hundred and fifty feet long by seventy-six feet wide.

Q. What is this yellow shading to the east of the red shading which represents the brick section of it?

A. That is still a part of the brick freight house; the brick freight house goes to here (indicating).

Q. Goes down north to the Big Four tracks?

A. Just leaving a passage-way between.

Q. Do you know the length of this overhead bridge extending over the tracks, shaded in a slate color, and marked "bridge?"

A. I don't know.

438 And further to maintain the issues on their part, all the defendants offered in evidence the testimony of M. E. RAWSON, as follows:

By Mr. CLARK:

Q. What is your name?

A. M. E. Rawson.

Q. You are the civil engineer of the City of Cleveland?

A. Yes, sir.

Q. And have you examined the entry made on page 67 of the book marked "Tax lists No. 3, 1869?"

A. Yes, sir.

Q. And will you tell the jury where the lots are located which are marked upon here "Sublots 21, 22, 23, 24, 6, 1, 6?"

A. I don't know that I can locate them definitely, only that they are on the south side of what is now called Front street.

Q. And between what streets?

A. Between East River and Spring, I should think.

Q. And these lots constituted the frontage on the south side?

A. Yes, sir.

Said page 67 of Volume 3 was admitted and read in evidence by counsel as follows:

Said page 67 is headed, "Front Street Paving Tax List," and shows assessments on sublots 21, 22, 23, 24, 6, 1 and 6, the last entry on said page being as follows:

"Lake Shore and C. C. C. and I. R. R'ds, as per contract \$7,-809.05."

And further to maintain the issues on their part, all the defendants offered in evidence the testimony of FRANCIS FORD, recalled, as follows:

By Mr. CLARK:

Q. In your examination this morning, you gave me some figures as to the total of the improvements made upon the land in dis-

pute, in 1893. You may state, if you desire to make a correction of those figures?

A. I desire to make a correction in those figures; I got out and read from the wrong paper.

Q. And what was included in those figures, that you desire to exclude?

A. They are the buildings that were on the ground in 1893.

Q. Give us the total of the buildings as they stood in 1893; what buildings did you intend to exclude?

A. The new engine house of the C. C. & C. Road, the passenger depots, and the freight repair house north of it, and the engine house shops—the two engine houses and shops of the C. C. & 439 C. and the C. & P. Road. I gave the figures this morning as \$532,376. That was an error. It should have been \$419,651.

Q. This difference is made up of those buildings that were torn down?

A. Yes, sir.

Q. You may state, if you can, what the cost of the passenger station, the old passenger station which was torn down, was?

A. The old passenger station, the C. C. & C., C. P. & A., and the C. & P. Road, estimates were \$38,532.

Q. And what was the cost of the two engine houses and machine shop between and the blacksmith shop north of the C. C. & C. round-house, or engine house?

A. The two engine houses, the C. C. & C. and C. P. & A., were \$20,555.

Q. Now, the machine shop?

A. The brick machine shop was \$6,942.

Q. The blacksmith shop north?

A. Well, the wood machine shop was \$6,751, the blacksmith shop \$2,524.

Q. Did you make an estimate of the cost of this overhead bridge?

A. I did.

Q. Was that included in the total that you gave, \$419,000?

A. Yes.

The COURT: What is the aggregate of all you have just given?

Q. What is the total of these you have just given, all told?

A. I have not footed them all up together.

Q. What is the grand total of all the items that you have given?

A. Including those that I have just given, \$532,376.

Cross-examination of FRANCIS FORD.

By MR. LAWRENCE:

Q. When you give the value of certain structures and tracks as being \$419,651, of what year are you speaking?

A. That was the value of the buildings that are now standing on the ground, in 1893.

Q. Did you make any appraisal of them in the year 1893?

A. I made it a year ago now, in March, 1898.

Q. You did not examine them at all in 1893, did you?

A. No; not in 1893.

The COURT: Was there any substantial difference in their value in 1893 and now, at the present time?

The WITNESS: No; scarcely none.

Q. What are the items that made up your total of \$419,651?

A. First is the freight house on the pier.

Q. The east freight house?

A. The old wood freight house on the pier, out in the lake.

440 Q. Which company's?

A. Joint, between the C. C. & C. and C. & P.

Mr. CLARKE: Is that C. & P.?

The WITNESS: C. & E. I should say.

Mr. CLARKE: What is it now, the Lake Shore?

The WITNESS: The Lake Shore. It was joint originally, and is now used by the C. & E. Road.

Q. What is that amount?

A. \$11,805; that is not including the dock; that is the building above the floor of the dock.

Q. Go on, and give us the other items?

A. Next is the brick freight house on Front street, \$45,083; the wood freight house west of that, running down to the river, \$10,268. Then there is the earth filling, of which we took two-thirds of the value—that is \$57,000.

Q. What do you mean by two-thirds of the value?

A. Two-thirds of the estimate we made of it, which was 580,000 cubic yards.

Q. Did you make that estimate based upon the total increased width of the property since 1849?

A. We made an estimate of it from the average depth of the fill, and gave it a depth of—an average depth of fifteen feet, and figured it at fifteen cents a cubic yard.

Q. I will ask you if that includes the total increase in width of the property there since 1849?

A. It was estimated on the fill out to the bulkhead.

Q. From what point from the south?

A. The water line as indicated by the map that we were examining.

Q. Give us your next item?

A. The piles, timber and plank for docks and tracks; that includes all that was docked, \$228,364.

Q. Now, I wish you would point out on this map, "Exhibit No. 6," what piles you included?

A. We commenced with the tracks on the west line of Water street, these tracks that belonged to the C. C. & C.—

Q. I am asking you about piles?

A. The piles were under the tracks; these tracks were all on piles—at the west line of Water street, running down to the river and out to the freight house, on these tracks (indicating)—all those tracks running out there, and the platforms—the freight house platforms—under the freight house, and in the rear, all

around it—represented on the other map, it is not on this—
441 there was a platform all around this building, outside of the building, which was all docked and piles and timber; that is represented on the other map, not here; that included also what is not included here, the dock of the passenger depot, in here (indicating), including the whole of the passenger depot and the platforms around it.

Q. That is the depot that has been removed?

A. Yes, sir; it has been removed a number of years ago and now is covered with tracks. And all the spaces that were docked in here (indicating), they are not represented on this map, so that I can't point them out, but on the other map they were represented just as they were actually built; but they were all the docks that were covered, piled, timbered and planked, in this space between the Cleveland & Pittsburgh Road and the east line of the C. C. & C. Road.

Q. And you included in that piles that had been removed and taken away, as well as those that are there now?

A. I don't know that any of them were ever taken away; they have been covered up, but not removed.

Q. Do you know whether there are any of them there now, that are not rotted or decayed?

A. I suppose they are there yet, under ground.

Q. You don't know, though?

A. No.

Q. How do you arrive at their value, then, in 1893, if you did not see them and don't know what is the condition of them?

A. By getting the bill of timber of the piles, and the number of feet, and getting the average, arrived at by the depth of water, and the fill above the water, and the necessary distance in the ground, of timber, feet square timber, reduced to board measure, and three-inch plank on top of it.

Q. Isn't it a fact that with respect to those piles your are testifying simply from what you learned from the books of the company?

A. No, sir; I didn't see the books of the company connected with that; I got that in the field; that includes all the piles.

Q. Have you included all the piles?

A. That includes all the piles, with the bulkhead—that is not shown on this map—extending across here (indicating) south of the passenger pier, and from the passenger pier out on the bulkhead, across here (indicating), as far as the two joint companies, across here (indicating)——

Q. Indicate to the jury what you mean when you say “extending across here?”

A. Where my pointer was.

Q. I want to get it so that it will be in the record?

A. Along the outer bulkhead, in front of the property—
442 the joint property of the Lake Shore & Michigan Southern and the Big Four, which is here, represented here (indicating).

Q. Did you include anything for the slips east of that?

A. Nothing; east of that the Cleveland & Pittsburgh runs; I don't know anything about that company.

Q. How much of the \$228,364 was for the bulkhead that is now out there at the water line?

A. Well, the outer bulkhead was not included in those figures; that is another figure to follow.

Q. Then the figures that you gave us are simply for these docks and piles that are now covered up?

A. Yes, sir; and tracks.

Q. Does that include the tracks?

A. It includes the piles for the tracks.

Q. But does not include the tracks, does it?

A. No, sir.

Q. What is the next item?

A. The overhead bridge.

Q. How much is that?

A. \$13,038.

Q. Give us the next item?

A. The next item is the tracks, the value of the iron, ties, spikes, and laying of track, \$21,597.

Q. The next item?

A. The next item is the outer bulkhead and stone breakwater, \$32,496.

Q. Do you know when that was put in; that outer bulkhead and stone breakwater?

A. I do not, exactly; I took the measurements of it on the ground, as they stand today.

Q. You don't know whether they were there in 1893 or not, do you?

A. Yes; they were there then, and before that; I don't know just when they were built.

Q. What was the amount for that?

A. The total amount for that is \$419—

Q. No, no; for the last item you gave me?

A. \$32,496.

Q. Can you tell me how far the east pier of the east government pier, on the river, extended in 1851—how far it extended north?

A. I could not, exactly; I don't recollect; I know from observation, where it stood, but I never made any figures on that.

Q. Can you tell by looking at the map that you had here this morning, made in 1851?

A. I think I could; that I would have to get entirely from the scale. I don't happen to have a measure in my pocket.

Q. Here is the map and a measure?

A. I think it is represented by this (indicating); it is a scale of a hundred feet to the inch. It is about 900 feet from the northerly line of Front street.

443 Q. And how far from the water line at the C. & P. freight depot, near the pier?

A. About 750 feet.

Mr. CLARKE: And how far down from the water line, down opposite Spring street?

The WITNESS: That is opposite this point (indicating), at the government pier.

Q. Do you know how far east the government pier extends at the present time?

A. I do not.

Q. It extends much further north, don't it?

A. Oh, yes; it extends farther out in the lake.

Q. And do you know when those extensions were made?

A. I do not.

Q. Now, what effect had the construction of the government pier upon the filling up of the Bath street land?

A. Well, it probably had some—not a great deal.

Q. Hasn't that resulted in the filling in with sand, from time to time, along the shore line?

A. The government pier extension don't make a great deal of difference with it; the government bulkhead makes more difference with it.

Q. What government bulkhead do you mean?

A. The bulkhead that has been built by the government, outside of all this. I should have said breakwater. I used the wrong term—bulkhead.

Q. Take the effect of the government pier and the effect of the breakwater, built by the government, and could you form any estimate of how much of the filling of Bath street has resulted from those causes?

A. I don't know that I could. It would be a difficult thing to estimate. I don't know any way of getting at it.

Q. You have no means of arriving at the number of square yards, or number of loads of dirt that were dumped in that place, have you?

A. No; nothing; only just observation of the amount of work being done during my——

Q. And you have no means of telling how much of it is due to the filling of sand from the improvements constructed by the government?

A. The action of the water?

Q. Yes?

A. No; I have no means of telling exactly.

Q. All you know of the railroads dumping in there during all the years that you were connected with the railroads, was a thousand cars of stone?

A. Stone filling and whatever amount of earth was gathered along the tracks and the yards of the railroads, that was dumped in there off of the cars.

Q. That would not amount to a great deal, would it?

444 A. It would not amount to a very — sum, but there was considerable of it.

Q. Where did this stone come from that was dumped in there?

A. Berea.

Q. Was it refuse stone?

A. Yes; what they call breakwater stone; it was loaded on our cars and we dumped it and took care of it.

Q. And it was hauled how far?

A. From Berea, twelve miles.

Q. In your estimate of the value of the improvements have you included any of the property of the Pennsylvania Company?

A. Not in these figures—that is a mistake; I have included the Pennsylvania Company in a part of this fill. I estimated the fill clear over to the government pier. It was very difficult to separate it. The reason why I did that, it was very difficult to separate it, because the tracks were mingled together in such a way that it was hard to make any distinction, but that part of the fill between the pier freight house and the government pier, that was made up as far as the bulkhead that we spoke of, which was just south of the pier freight house, that was included in the fill—that much of the Pennsylvania Company.

Q. You included nothing for the tracks of the Pennsylvania Company?

A. Nothing at all, nor the dockage.

Q. You spoke of the old passenger depot having been removed—do you include the buildings connected with it?

A. The buildings?

Q. Yes; the dining room and the other buildings?

A. Yes; the dining room and the repair house outside of it—those have all been deducted—all those three buildings there at that point.

Q. They were removed along in the latter seventies, I understand you to say?

A. Some time in the seventies—I have forgotten, really.

Q. You spoke of some car sheds on the east part of the property, in 1851—they have been removed, too, haven't they?

A. The car sheds?

Q. Yes?

A. I don't recollect about those.

Q. Didn't you speak of car sheds, in your direct examination?

A. I don't recollect what that would refer to now.

Q. Didn't you speak of car sheds in your direct examination, where the Cleveland & Pittsburgh ran their cars that were left standing on the track?

MR. CLARKE: Mr. Ford, he refers to a small shed north of the Pittsburgh freight house.

445 A. There was a shed on the river end of the Bath street freight house. That has been removed, but that was not included in any estimate—these figures that I have made.

Q. Are there any other buildings shown on your map of 1851, which have since been removed?

A. There is the two engine houses and the machine shop.

Q. And a blacksmith shop?

A. And a blacksmith shop.

Q. Any other building?

A. That is all.

Q. This morning, you spoke of piers under the old freight house of the Cleveland, Columbus & Cincinnati Railroad?

A. Piles.

Q. Piles? That freight house was not in the water?

A. Not in the water directly, but it was in the soft ground adjacent to the water and not considered as a sufficient foundation to rear a building on.

Q. And for that reason the piles were put under the building?

A. The piles were driven.

Q. But the shore line was out from the building?

A. Yes; out some little distance from the building—15 or 20 feet, probably.

Q. Are you able to say what of the present tracks on this property have been laid since 1893?

A. I am not familiar enough with the ground since that time to be able to say.

Q. In making your estimate of the trackage and the value of it, last year, you included all the tracks then on the ground?

A. Then on the ground—that is, that belonged to the two roads—the joint roads, the Lake Shore and the Big Four.

Redirect examination of FRANCIS FORD.

By Mr. CLARKE:

Q. You did not include any Pennsylvania Company tracks?

A. No, sir; no Pennsylvania Company tracks in the figures whatever.

Q. Now, in all the years that you were down there and had jurisdiction over this property, did the city, or any one in its behalf, make any construction upon this land north of the 132-foot line?

A. Nothing that I was ever aware of.

Q. Did anybody, in all those years, so far as you knew, assert in behalf of the city the right to enter upon it, or do work upon it?

(Objected to.)

Q. I will change the form of the question. You may state what, if anything, was done by any person in behalf of the city, to
446 your knowledge, in any way of asserting any right with respect to this property north of the 132-foot line, while you were chief engineer for the company?

Mr. LAWRENCE: Now, your Honor, I object to the question on the ground that it calls for a conclusion of the witness as to what would be the assertion of a right by the city, and also calls for his testimony as to things, not only done within his knowledge, but generally during the years when he was engineer of the road.

(The court overruled the objection; to which ruling of the court the plaintiff, by counsel, then and there excepted.)

A. To my knowledge no question was ever asked of the road in regard to it whatever.

Mr. LAWRENCE: Your Honor, I move to strike out the answer of the witness for the reason that it is not responsive to the question, and for the same reasons I stated in my objection to the question.

(The court overruled the motion to strike out; to which ruling of the court the plaintiff, by counsel, then and there excepted.)

Recross-examination of FRANCIS FORD.

By Mr. LAWRENCE:

Q. When did you cease to have connection with the road?

A. In 1880, the first day of June.

Q. And you had no particular knowledge of this property since that time, have you?

A. No; until these examinations were made.

Q. Now, up until 1880 were not the public permitted to come on this property and cross over it without any restrictions or objections?

A. I don't know of any objections that were made—none prior to that time.

Q. People did come down on this property, didn't they?

A. They came down there to dump material, and even came to me before 1880, and asked me the privilege of dumping dirt there—individuals did.

Q. Didn't a great many people come down and walk over this property and go out to the end of the docks and fish?

A. Well, I don't—it was open; I presume they did—foot men.

Q. Don't you know that a great many people did, from time to time, up until 1880, walk over this property?

A. Yes.

Q. In all directions?

A. Yes.

Q. And persons drove down over portions of it, didn't they, until that time?

A. I don't think any driving was done there excepting to do business with the railroad companies and freights.

447 Q. People did drive down to those freight depots?

A. Yes, sir; a great many.

Q. And also they drove down to the water front to dump dirt?

A. Yes, sir.

Q. And after the railroad company put up its overhead bridge, people drove down across that, didn't they?

A. Yes, sir.

Q. And from that bridge got down to the docks?

A. Yes, sir.

Q. Was there any restriction upon them doing that in all those years?

A. None, I think.

By Mr. CLARKE:

Q. People drove down there to do business with the company, didn't they?

A. Yes, sir.

Q. What do you say about people driving down there to get freight and deliver freight, driving over this bridge and down to the freight station to get freight?

A. That outer depot, that is the usual access to those fronts.

Q. And you say people that hauled dirt in there came in by your permission, often?

A. Yes, sir; came to me and asked my permission.

Q. Mr. Lawrence has asked if people did not stray over there to go fishing, over these tracks. I suppose people, in all your experience, stray along railroad tracks, wherever they are, and a great many of them get killed by it, don't they?

A. Yes; there was no restrictions down there while I was there.

By Mr. LAWRENCE:

Q. Since you left in 1880, you have not been down there very often, have you?

A. Not often, but every year several times.

Q. You would go down——

A. Just an exploring expedition; a very few times during the year, every year.

Q. You had no business that took you to that property?

A. None whatever.

Q. And you had no regular times for going?

A. No.

And further to maintain the issues on their part, all the defendants offered in evidence the testimony of B. F. MORSE, as follows:

By Mr. CLARKE:

Q. What is your name?

A. B. F. Morse.

Q. How old are you?

A. I am 69 and a half—I will be seventy next June.

Q. You are a civil engineer and have practiced your profession for how many years?

A. I commenced in the year 1851, in the fall.

Q. And you may state to the jury, if you will, what official positions you have held with railroads and with the city, or with individuals?

A. I was assistant engineer on the Lake Shore Road in the fall of 1851, and the year 1852, and afterwards I went off on to another road then, and in 1857 I returned to the road and was employed there until about 1866, with the Lake Shore Road. Part of the time I was building the Union Depot—the latter part of the time. Then, in 1869, I was on the road a year, and in 1886 and 1887, or 1887 and 1888, I was two years and a half back on the Lake Shore Road again, and——

Q. When were you city civil engineer?

A. I was appointed city civil engineer in 1875, and went out of office in 1884, and then again I was appointed inspector of buildings in 1889, I think it was, and I had three years and a half there, inspector of buildings for the city.

Q. You may state whether in your capacity as engineer for the Lake Shore Railroad Company you had immediate charge of the construction of what is called the Union Passenger station, or depot?

A. I did. I made all the plans and laid it out and superintended it while it was building.

Q. You may state to the jury whether or not you know the cost of that structure?

A. I do.

Q. What was it?

MR. LAWRENCE: I object to that, for the same reasons as I gave before as to the question of estoppel—those two objections; and for the further reason that that building is not upon the property in controversy in this action.

(The court overruled the objection; to which ruling of the court the plaintiff, by counsel, then and there excepted.)

Judge PHILLIPS: We would like to add another ground to our exception, Your Honor, and that is that it appears in the case that this depot building is situated on the premises owned by these railroad companies and located across a public street from the locus in quo.

A. The total cost of the Union Depot, not including the land, but including the grading and tracks and paving outside, and the retaining wall, was \$455,710.74. That don't include the land.

Q. What is the fact as to the main lines of the Lake Shore Road which pass through this station, passing over the Bath street
449 property—do they, or do they not, north of the 132-foot line?

A. Yes; the Lake Shore tracks run through to the river, north of Bath street, and across the river.

Q. And the main tracks of the Big Four that come into the Union station, do they pass over part of this land north of the 132-foot line?

A. Yes; and cross Bath street.

Q. And how about the tracks of the Cleveland & Pittsburgh Road that pass through the Union station?

A. The Cleveland & Pittsburgh main tracks, they come down and stop in the station, but there are main tracks that they run their coal and freight and iron over, that pass down north of the Union station, and out over this land.

Q. I see upon the map here, Exhibit, No. 6, there seems to be seven tracks north of the Union station—do those all run out upon this Bath street tract, north of the 132-foot line?

A. No, sir; not all of them.

Q. How many of them do?

A. Well, yes, they do run out there (indicating); six north of Bath street and six east of Water street.

Q. But there are seven that do run out on the Bath street tract?

A. There are seven tracks in all north of the depot—two of them used by the Lake Shore.

Q. They run clear out on to this Bath street property, don't they?

A. They run clear through, clear to this point (indicating) and across the river; they run together there across the river.

Q. That is clear out to within two or three hundred feet of the river?

A. Within a couple of hundred feet, I suppose, the Pittsburgh and Lake Shore switch together there, and run across the river together, there at that point (indicating).

Q. And that is about how far east of the river?

A. The switch is about 150 feet from the river and dock.

Q. Now, of those tracks north of the station, how many of them are Pennsylvania Company tracks?

A. I am not quite positive, but I think two of them belong to the Lake Shore, and the balance of them are Pennsylvania Company tracks.

Q. And all those Pennsylvania Company tracks run clear across this property up to within 150 feet of the river?

A. Two of them, I think.

Q. Those two tracks are in addition to the two tracks that actually pass through the passenger station?

A. Yes, sir.

Q. And over those tracks are run all the through freight trains of the Lake Shore, are they not?

A. No; I believe some of them come in on the Columbus
450 Road and some come in on what is called the northern division, but the passenger trains run in over these and over the Columbus Road, some of them.

Q. The passenger trains all run through the passenger station?

A. Yes, sir; the through trains.

Q. How about the through freight trains?

A. They go immediately north of the depot.

Q. And the tracks both within it and north of it, all excepting the two of the Pennsylvania Company run substantially across the whole of this Bath street property, is that not so?

A. Yes; these tracks that go into the depot run across part of this Bath street property, across here (indicating).

Q. And the others run out to the river?

A. Yes, sir.

Q. Now, without going into detail and taking time, you may state whether or not you joined Mr. Ford in making an estimate of the value of the buildings that were on this land in 1893?

A. Yes; we did.

Q. And what was the estimate of the value of the buildings as they stood—the estimate that you put on them?

The COURT: Would you not be content to have him say that his figures agree with those of Mr. Ford?

Q. State whether or not the estimate you made agrees with that given here by Mr. Ford, on the witness stand?

A. Yes, sir; we made this jointly and our figures agree.

Cross-examination of B. F. MORSE:

By Mr. LAWRENCE:

Q. This Union depot you spoke about is a passenger station exclusively, isn't it?

A. I believe they use it for express business, too.

Q. Passenger and express business?

A. Passenger and express and baggage.

Q. And for the express business that is done in connection with the passenger trains?

A. Yes; I suppose so.

Q. The Cleveland & Pittsburgh Road runs no passenger trains into this depot from the west, do they?

A. No, sir; not that I know of.

Q. And the only passenger trains that are run into this depot from the west are over the two tracks of the Lake Shore and the track of the Big Four Railroad?

A. Yes, sir; that is all, I believe.

Q. And those are run over the main track, aren't they?

A. They come in across the river; that would be one main track, the Lake Shore—two, we might say—and then the main
451 tracks of the Big Four come down and run around into the engine house, across that property there.

Q. It comes in about Spring street, doesn't it?

A. Yes; they cross in there.

Q. And from that into the Union depot?

A. Yes, sir.

And further to maintain the issues on their part, all the defendants offered in evidence the testimony of EDWARD S. FLINT, as follows:

By Mr. CLARKE:

Q. What is your name?

A. Edward S. Flint.

Q. You reside in the City of Cleveland?

A. I do.

Q. And have for how many years?

A. Since 1838.

Q. You were for a long time superintendent of the Big Four Railroad?

A. I was.

Q. Between what years?

A. From 1855 until 1878.

Q. And while you were superintendent did you have your office here in this city?

A. Yes, sir.

Q. And this property in controversy in this case came under your jurisdiction as such superintendent?

A. Not directly. I was superintendent of transportation. I had more to do with the transportation on the road than anything relating to the property matters.

Q. But this was under your jurisdiction?

A. Yes.

Q. You may state what, if anything, was done by the city, or any one in its behalf, upon this land, during the years that you were superintending—I mean north of the 132-foot line on Bath street?

(To which question the plaintiff, by counsel, objected; for the same reasons as before stated. The court overruled the objection; to which ruling of the court the plaintiff, by counsel, then and there excepted.)

A. I do not know that the city ever done any work there.

Q. You do not know of anything?

A. No, sir.

Q. You may state what, if anything, was done in the way of asserting a claim by any one in behalf of the city, to this property, while you were superintendent?

(To which question the plaintiff, by counsel, objected for the same reasons as before stated. The court overruled the objection; to which ruling of the court the plaintiff, by counsel, then and there excepted.)

A. I never heard of any claim being made.

Cross-examination of EDWARD S. FLINT.

By Mr. LAWRENCE:

Q. You say you were superintendent of transportation?

A. Yes, sir.

452 Q. Where was your office?

A. It was part of the time on Superior street—the first part of it—and most of the time on Water street, corner of Water and St. Clair.

Q. Your principal business was in connection with the passenger department of the road?

A. Freight and passenger department also.

Q. You did not have anything to do with the construction department or the repair department?

A. No, sir; that was in charge of the engineer.

Q. And you did not have anything to do with the operating department either, did you—you did not have anything to do with the operation of the railroad?

A. I had to do with the running of all the trains. They were under my supervision.

Q. That was within your department?

A. Yes, sir; arranging time tables and everything of that kind.

Q. But you did not have charge of the property of the company?

A. Only its passenger and freight equipment.

Q. But not of any real estate or other property belonging to the company?

A. No, sir.

Q. Your duties did not take you down upon Bath street very often?

A. Only as to the movement of trains and looking after the movement.

Q. And you were not concerned with any controversy as to the ownership of the property, were you?

A. Not directly.

Redirect examination of EDWARD S. FLINT.

By Mr. CLARKE:

Q. You were the highest officer of the company here at that time, were you not?

A. The president was the highest.

Q. Who was the president?

A. L. M. Hubby, most of the time.

Q. Were not the engineers under your jurisdiction?

A. The engineer's department was under the charge of the president.

Q. I will ask you if Mr. Frank Ford was chief engineer of the road while you were superintendent?

A. He was.

And further to maintain the issues on their part, all the defendants offered in evidence the testimony of GEORGE W. ANDRUS, as follows:

By Mr. CLARKE:

Q. What is your name?

A. George W. Andrus.

Q. You are in the employ of the Lake Shore Railroad
453 Company and have been for how many years?

A. I commenced in 1860—39 years.

The COURT: In what capacity?

The WITNESS: Local Freight Agent.

Q. What is your position now?

A. I commenced as clerk, but I am at present local freight agent.
I was made local freight agent in 1876.

Q. You may state whether or not it is your duty as local freight agent, to keep statistics as to the number of cars handled and where they are handled by the Lake Shore Company in this city?

A. That is one of my duties.

Q. You may state, if you will, the number of cars that were loaded and unloaded with freight for the residents of the City of Cleveland, upon what is called the Bath street property, in the year 1893?

A. 50,877 cars.

Q. What was the tonnage of those?

A. 243,716 tons.

Mr. LAWRENCE: Did you say those 50,877 cars were loaded and unloaded?

The WITNESS: They were loaded and unloaded.

Q. You may state whether that was all freight that was delivered or received from persons here in Cleveland—it was Cleveland business, was it?

A. 29,430 cars were unloaded and delivered; 21,447 cars were loaded.

The COURT: That does not quite answer Mr. Clarke's question. He asked if that was all Cleveland business.

The WITNESS: Yes, sir; that was all Cleveland business.

Q. Does that tonnage represent what was received as well as what was sent, in tonnage?

A. Yes, sir.

Q. What kind of freight was it, that it shows such small tonnage?

A. It was merchandise principally.

Q. Are we to understand, now, that all of these 50,877 cars were unloaded and loaded upon this property in dispute?

A. I believe they were.

Q. Now, you may state, if you will, the number of cars that were handled over this property in the way of interchange with other roads, in the year 1893?

A. Do you specify any particular road?

Q. Each road?

A. With the Big Four, we received from the Big Four road 65,961 cars.

Q. How many from the Pennsylvania?

454 A. There was about 35,000 from the Pennsylvania—to and from the Pennsylvania; I could not state that any differently.

Q. You have not the exact figures for that?

A. I have not the exact figures.

Q. What did you deliver to the Big Four over this property?

A. 60,096 cars.

Q. Did the 35,000 cars which you have given for the Pennsylvania Company include both those received and those delivered?

A. To and from, I said.

Q. To and from, both?

A. Yes, sir.

Q. Is that all of the interchange business for 1893, that was handled over this property?

A. No, sir.

Q. What other is there?

A. There was cars delivered to the Big Four to go to the Erie and to the C. C. & S.

Q. How many of those?

A. 687 cars from those roads, and to those roads 4,663 cars.

Q. Does that cover the entire interchange business?

A. On that property, yes, sir.

Q. Have you the figures as to the number of cars that passed over this property, in the way of through business?

A. Yes, sir.

Q. What was that tonnage—the number of cars?

A. 621,288 cars.

Q. That is both east and west?

A. Yes; I can give them separate, if you wish.

And further to maintain the issues on their part, all the defendants offered in evidence the testimony of WILLIAM T. SELLER, as follows:

By Mr. CLARKE:

Q. What is your name?

A. William T. Seller.

Q. You reside in Cleveland, and have for how many years?

A. Since 1849.

Q. You were in the employ of the Big Four and Lake Shore Railroad Companies for many years. Will you tell us when you began that employment and when it ceased?

A. I commenced first for Harbach, Stone & Wick—they were building the Big Four road, or the C. C. & I. in the fall of 1849; they were building the road; the road was not opened until 1850—1851, the road was opened.

Q. The road was opened to Cleveland in 1851?

A. Yes, sir.

Q. And when was the building called the Bath Street Freight House built?

A. That was built in 1851.

455 Q. That is still standing?

A. Yes, sir; with an addition built on it.

Q. When was the pier freight house of the Lake Shore road built?

A. I think it was in 1853 or 1854; I think it was commenced in 1853 and finished in 1854. We moved over there in 1854, from the Bath street house.

Q. That building is still standing and in use?

A. Yes, sir.

Q. When was the old passenger station built?

A. The one that was pulled down, do you mean, or the first one?

Q. Yes?

A. I think that was in 1853. There was a station building before that, out further in the lake, where the boats used to come in and land passengers.

Q. Now, recalling the condition of things prior to the building of the overhead bridge which is now there, you may state whether there was a plank crossing somewhere nearly opposite the end of Spring street, over which people went when they were after freight, or to do business with the companies?

A. Yes, sir; there was a crossing to drive across there.

Q. And what is the fact as to there being a similar crossing somewhat east of that and nearer to Bank street—nearer the Union Station, for some years?

A. Yes, sir; there was.

Q. And over those crossings people drove to get freight and to deliver it there?

A. Yes, sir.

Q. By the way, in the discharge of your duties where did you spend your time during many of those years?

A. Right around the depots.

Q. Around the pier freight station?

A. Yes, and Front street. I had charge of the men at both depots.

Q. At the pier and Front street?

A. Yes, sir.

Q. Now, when with respect to the time that the overhead bridge was constructed, was the planking taken up, of both of those grade crossings to which you have referred?

A. Soon after. People was very glad of it, too.

Q. I suppose they were dangerous crossings?

A. Oh, yes, sir, very.

Q. And the travel down to the freight stations, to and from them, and down to this land and over it, has been over this overhead bridge, ever since?

A. Yes, sir.

Q. Now, it has been stated that people hauled down refuse earth for a number of years from cellars, and excavations, upon this land—you may state whether or not that was with the permission of the companies, to your knowledge?

A. Yes, sir; it was. I know they used to come to me at the pier and want to know where to put it, to get a place to dump their stuff, and I didn't feel that I had authority to do it, but they
456 used to come down nights and dump it on the dock and I used to have to put men out there to shovel it in the lake in the morning. They were not very particular whether they dumped it in the lake or not; and the company after that, put two or three men there to take care of it, because there was so much of it come down—after they commenced to building here; and then our people used to bring it by the carload from the shops, cinders and stuff of that kind, and anything we had we dumped in there.

Q. What is the fact as to the company hauling stone in there?

A. Oh, yes, they dumped a lot of stone in there, but of course, that was out of my department; that came under the administration of Mr. Blee.

Q. He was superintendent of the Big Four?

A. Yes, sir. Mr. Blee put more stone in than any one else. I know that he did because they had trains running there two or three times a day, dumping out into the lake.

Q. That was while he was superintendent of the Big Four?

A. Yes, sir.

Q. Thousands of car loads?

A. Yes, sir.

Q. When did you first go to work for the railroads down there?

A. I commenced in 1850; in 1851 I commenced in the freight department; before that I was in the construction department.

Q. And you continued in the employ of the companies from 1851 until when?

A. I was there forty years; I am still connected with the railroad a little; not much; with the carting business; I am there every day.

Q. And during all those years you spent a large part of your time on this land and in its vicinity?

A. Yes, sir; all the time.

Q. You may state, in all those years, what work you ever saw done by the city, or any one in its behalf, upon this property, north of the 132 foot line?

(To which question the plaintiff, by counsel, objected; for the same reasons as before stated. Which objection was overruled by the court; to which ruling of the court the plaintiff, by counsel, then and there excepted.)

Q. What, if any work did you ever see done by the city, or any one in its behalf, north of that 132 foot line?

A. None.

Q. Never say any?

A. No, sir; excepting what the railroad companies did.

Q. Well, by the city?

A. By the city—they didn't do anything.

457 Q. You were superintendent of the freight department?

A. I was foreman of the freight department there.

Q. You may state what if anything was done by the city, or any one in its behalf, during all those years, in the way of asserting any claim to this land, to your knowledge? (To which question the plaintiff, by counsel, objected, for the same reasons as before stated. The court overruled the objection; to which ruling of the court the plaintiff, by counsel, then and there excepted.)

A. Not to my knowledge.

Cross-examination of WILLIAM T. SELLER.

By Mr. LAWRENCE:

Q. What was your position there?

A. I was foreman of the freight department; had charge of the men handling freight.

Q. You simply had charge of the men that loaded and unloaded cars?

A. Yes, sir.

Q. You didn't have anything to do with the management of the railroad, or its operation?

A. No, sir.

Q. You were not one of the head officers?

A. No, sir.

Q. And when did you cease from that position?

A. About five years ago, I guess.

Q. That would be in 1894?

A. Yes, sir; I was there forty years and I thought that was long enough.

Q. You say it was in 1894 that you quit?

A. I think it was that year; yes, sir; I am not positive.

Q. And since then you have had no direct connection with the railroad?

A. Nothing more than as carting agent there, for the company; I deliver the freight for the city, from the Merchants' Despatch and Empire Line, and do any cartage for the company.

Q. That is, you run wagons that haul goods?

A. Yes, sir; deliver it from the railroads.

And further to maintain the issues on their part, the defendants offered in evidence the testimony of DANIEL M. ALVORD, recalled, as follows:

By Mr. CLARKE:

Q. Mr. Alvord, I did not know this morning, what seems to be the fact, that there was a second grade crossing over the tracks east of Spring street, somewhere near Water street, and the west end of the Union Depot, over which people drove, when they were going for freight, to deliver or receive freight. There was a grade crossing near Water street, was there not before the building of this bridge?

A. Yes, sir.

Q. Now, when was that crossing abandoned?

A. Directly after the bridge was completed.

Q. Was the planking torn up?

A. Yes, sir.

Q. And all use of it ceased?

A. Yes, sir.

Cross-examination.

By Mr. LAWRENCE:

Q. You are still down on that property, are you, on the Bath street property?

A. No, sir; I am not.

Q. When did you leave there?

A. Well, I left there in 1874 and moved to Collinwood, in 1874.

Q. Your duties take you there now?

A. Yes, sir; they do.

Q. That is what I meant; you are still employed on the Bath street property?

A. Yes, sir.

Q. Do you know anything about the regulations down there excluding hackmen from crossing over that bridge?

A. Not that I know of.

Q. Don't you know that there is a regulation in force over there, that prevents any one, except the Cleveland Transfer Company from running hacks across that bridge, and down to the docks?

A. No, sir.

Q. You don't know of any such regulation?

A. No, sir.

And further to maintain the issues on their part, all the defendants offered in evidence the testimony of SAMUEL DAVIS, as follows:

By Mr. CLARKE:

Q. You may state your name to the court and jury?

A. Samuel Davis.

Q. You are in the employ of the Lake Shore Railroad?

A. Yes, sir.

Q. In what capacity?

A. I am general yardmaster, now.

Q. Do you have charge of the yards here in Cleveland?

A. Yes, sir.

Q. And how long have you been in the employ of the company?

A. About thirty-six years—thirty-five or thirty-six.

Q. How long have you been general yardmaster?

A. Twenty years coming first of April.

459 Q. And what position did you hold prior to becoming general yardmaster?

A. Assistant yardmaster.

Q. And in your capacity as assistant yardmaster and also in that of general yardmaster, you may state whether or not you had within your jurisdiction, the property in controversy in this case?

A. Yes, sir.

Q. And the tracks of the company upon it?

A. Yes, sir.

Q. How many tracks has the Lake Shore Railroad Company in use north of the Union Passenger Station, which extend out to and upon this property?

A. Well, there is the two outside tracks—you mean outside of the depot, do you?

Q. Yes?

A. They go down to the bridge and cross the river, and then we have what we call pier track, that goes down to the pier freight house, and two or three side tracks running off of that, which we use for spur tracks, for unloading our freight.

Q. And now, how many tracks are there going through the Union Passenger Station, used by the Lake Shore, and then extending out over this land?

A. Well, I hardly know how many there is; there is about nine on the west end; there is nine tracks at the west end of the passenger depot.

Q. How many run through the station, and then by switches to the shore, and connect out on this land?

A. There is eight or ten of them run through there.

Q. Do the freight trains go through the passenger station?

A. No, sir.

Q. They all go outside?

A. On the outside.

Q. And what tracks have the Pennsylvania Company outside, which extend over on to this land?

A. They have two main tracks that run parallel with ours going west.

Q. And those extend on to the river?

A. Yes, sir.

Q. And what tracks has the Big Four that run out on to this land?

A. They have two tracks. They run north. They don't run our way particularly.

Q. They run straight north to the round house?

A. Yes, sir; there is where they keep their passenger equipment.

Q. And what tracks pass through the Union Passenger Station of the Big Four, and so out over his land?

A. Well, they have two or three tracks running in there; they change them back and forth, according to whether the other tracks are clear or not. I guess I am not very well posted, in there, because there is a depot master in there that looks after all that business; I only know on the outside.

Q. The track that extends up to that old pier freight house—is that double or single?

460 A. That is single track, they call it, until they get down to the pier, and then it points off to two—it is a double track into the pier; we have got two tracks to the pier.

Q. How extensive is the use of the Lake Shore tracks over this land?

A. In the main track business?

Q. Yes; you may first take the main track?

A. Well, there is a great many cars pass there in twenty-four hours. I was figuring up—about 106 freight trains go across them tracks ever twenty-four hours.

Q. And how many passenger trains?

A. There is 69 passenger trains that is billed to go in and out of the depot every twenty-four hours; that doesn't include pony switching backwards and forwards.

Q. And how many switching engines are in use by the Lake Shore Company upon this property constantly?

A. Well, we have three in the lower yards—that is, on the east side of the river; three in the day time and four nights.

Q. In the handling of such business as is handled habitually upon this property, in the way of merchandise freight, you may state what it is necessary to have in the way of switches for the purpose of both delivering and receiving, and sending it out?

A. Well, we have to have tracks in order to get it in.

Q. And are all the tracks which are laid upon here, necessary?

A. Yes, sir; I wish we had more.

Q. And they are in constant use, are they?

A. Yes, sir.

Q. Calling your attention now, to a grade and plank crossing which formerly was somewhere nearly opposite the end of Spring

street, and also to a second plank grade crossing which was near Water street—do you remember those?

A. Yes, sir.

Q. When was that planking torn up and the crossings abandoned, with reference to the time when the overhead bridge was built?

A. I think it was sometime in 1873.

Q. Just about the time the bridge was built?

A. Just as soon as the bridge was fixed, then them crossings came up.

Q. And since that people have gone over this overhead bridge, to get freight?

A. Yes, sir.

Q. And to deliver freight?

A. Yes, sir.

Cross-examination of SAMUEL DAVIS.

By Mr. LAWRENCE:

Q. When you speak of the number of trains every twenty-
461 four hours, do you mean the Lake Shore trains, or all trains?

A. The Lake Shore trains and freight trains that go through the Y—the Big Four, for instance.

Q. You didn't include any of the Cleveland & Pittsburgh trains?

A. No, sir.

Q. And what year were you speaking of?

A. Right along, now sir.

Q. Was it about the same in 1893?

A. No; perhaps not quite so heavy as it is now.

Q. What would you say would be the increase since 1893?

A. Well, I don't exactly like to tell you that—they vary more or less; there is more, I am satisfied, there is more cars now, than there was in 1893.

Q. Couldn't you give us some estimate of the percentage of increase?

A. No; I wouldn't like to answer that.

Q. Has it doubled since 1893?

A. 1893 was pretty good—no, I don't think it has doubled.

Q. There has been a constant increase in the business, since that time?

A. I think so, yes, sir.

Q. Would you say there had been an increase of fifty per cent since 1893?

A. Well, I wouldn't like to say that, unless I had the figures. I am on the outside. Cars pass there, when I am not there.

Q. How did you arrive at the estimate of the number of trains at the present time?

A. By a little figuring; by going on the bridge; we keep tab of every train that goes across the bridge, east and west—the Cuyahoga river bridge.

Q. You counted them for some particular day, did you?

A. No, sir; we take the whole month; it is done every day.

Q. What month?

A. This last month, December.

Q. And then you average it?

A. No, sir; not at all; you find out every day how many trains pass over the bridge, both east and west. The Pennsylvania Company, too—they have got the number of Pennsylvania trains going across there.

Q. And did you use the same number of switching engines in 1893, that you use now?

A. Yes; I guess we did; we have got a little better ones perhaps now, than we had then.

Q. The result of it is that at the present time, so many trains run there, and the switching engines are in such use, that you say the tracks are in constant use?

A. Yes, sir; in that district.

Q. You mean on the Bath street property?

A. Yes, sir; right in that district.

Redirect examination of SAMUEL DAVIS.

By Mr. CLARKE:

Q. Do you know how many switching engines are used,
462 all told, by all the companies upon this property?

A. No, sir; I don't know how many the Pennsylvania Company use; they have got quite a number, though.

Q. But you don't know the number?

A. No; I would not say.

And further to maintain the issues on their part, the defendants offered in evidence map made in 1851, marked Defendant's Exhibit No. 13; and it is stipulated by counsel that a blue print may be used in place of the original map, being the map referred to in the testimony of Francis Ford herein.

And further to maintain the issues on their part, the defendants The Lake Shore & Michigan Southern Railway Company offered in evidence certified copy of the record in the case of William I. Price and Lemuel Crawford vs. City of Cleveland et al., Supreme Court Record, Vol. M, page 247, Appeal in Chancery. (Plaintiff objects to the introduction of any part of the record in the case of Price and Crawford vs. The City of Cleveland et al., on the ground that the City could not by any statements or admissions in its answer in said case, divest itself of its control of Bath street or its duty in respect to said street imposed upon it by law; nor could it thereby enlarge its powers to grant rights to the railroad companies for the use of said street, or add to or change the legal effect of the contract made with the Cleveland, Columbus & Cincinnati Railroad Company, September 13, 1849.)

Mr. BAKER: Our objection is to the whole record, and not specially to the petition as explaining the allegations of the answer.

The COURT: Price and Crawford had leased a part of this property.

Mr. FOOTE: They say they had leased from the City of Cleveland certain lots on Bank street and were doing a large amount of business down there and were being interfered with.

(The objection was overruled by the court; to which ruling of the court the plaintiff then and there excepted.)

Said record was read in evidence as follows, to-wit:

"Supreme Court Record, Vol. "M," Page 247.

THE STATE OF OHIO,
Cuyahoga County, ss:

No. 49.

WILLIAM I. PRICE and LEMUEL CRAWFORD.

vs.

THE CITY OF CLEVELAND, HEZEKIAH CAMP, WILLIAM B. LLOYD,
and The Cleveland, Columbus & Cincinnati Railroad Com-
pany.

463

Appeal in Chancery.

19-219.

Be it remembered that heretofore to-wit: at a term of the Supreme Court of the State of Ohio begun and held at the Court House in Cleveland in and for the County of Cuyahoga on the twenty-sixth day of July in the year of our Lord one thousand eight hundred and fifty-one, before the Honorable Peter Hitchcock, Chief Judge and Rufus P. Spaulding, Judges of said Supreme Court, this cause came into this court by an appeal by the complainants and the original files and transcripts of the journal entries were duly certified to said Supreme Court by the Clerk of the Court of Common Pleas in said Cuyahoga County, which said documents and proceedings *is* in the words and figures following, to-wit:

Vacation After March T., 1850.

Be it remembered that heretofore to-wit: on the eleventh day of May A. D. 1850, came the complainants by their Solicitors and duly filed in the Clerk's office of the Court of Common Pleas of Cuyahoga County the following Bill in Chancery, to-wit:

Bill in Chancery.

Court of Common Pleas.

STATE OF OHIO,

Cuyahoga County, ss:

Vacation After March Term, A. D. 1850.

To the Honorable Judges of said Court in Chancery Sitting:

Your complainants, Lemuel Crawford and William I. Price residents of said County humbly represents unto Your Honors, that they are partners in business engaged in the sale of coal to Water craft on Lake Erie at the City of Cleveland. That they have been engaged in said business for the last two years, and during last Summer sold from the premises hereinafter mentioned about 500,000 bushels of coal. That they have on hand about 200,000 bushels of coal dug in the interior of said State at great expense, which they have contracted to be brought and placed on said premises with expectation of selling same to said water crafts. That your Orators under the name of L. Crawford & Co., leased of the City of Cleveland (whom your Orators prays may be made defendants to this bill). Lots seven and eight in Bath street in said City of Cleveland in said County as laid out by Ahaz Merchant whose survey is now on file in the City Clerk's office in said City by lease bearing date thirty-first day of March, 1848, for a term extending from the first day of April, 1848, to thirty-first day of March, 1853, at three hundred dollars per annum payable on the first days of January, April, July and October in each year in advance at the office of such officer or agent as shall be intrusted by resolution of the City Council of said City with the management and collection of the Bath street rents, to which lease your Orators refer and attach hereto and make part of this bill. Your Orators further show that one Pierre Mathivet on the first day of April, 1848, leased of said City of Cleveland lot number Six in said Bath street as surveyed by Ahaz Merchant whose survey is on file in the office of the City Clerk of said City of Cleveland for a term extending from the first day of April, 1848, to the thirty-first day of March, 1853 at the rate of one hundred and fifty dollars per annum payable in advance on the first days of January, April, July and October in each year at the office of such officer or agent as shall be designated by a resolution of the City Council and to which lease hereto attached, Your Orators by leave refer and make a part of said bill. Your Orators further say that one Michael Davis had some claim on said last mentioned premises and had with the aid of said Mathivet erected thereon valuable improvements worth nine hundred dollars; that some time in December, 1849, said Davis and Mathivet assigned for one thousand dollars paid them by your Orators said lease and improvements to your Orators. Your Orators further say that they have placed improvements in addition to the value of three hundred dollars on the lots described in both of said leases. They further represent to Your Honors

that all the rent due to first day of April, 1850, has been paid on both of said leases. Your Orators further represent if they are deprived of said premises at the present time they will suffer damage to the amount of ten thousand dollars. They further say that said City of Cleveland had a clear title to said premises and that the lots mentioned in said leases were embraced in said Bath street, an original street of said City, and that said City by law had a right to lease portions of the same, but had no right to sell the same in manner hereinafter described. Your Orators further state that one Jabez W. Fitch, Attorney for the City of Cleveland was appointed by said City of Cleveland to collect rents on said leases and other leases on Bath street in March, 1848, as your Orators are informed and believe and continued as such agent until about the first of March, 1850. That while such agent he waived the right to receive said rents at his office and proposed to and did call on your Orators for said rents at the time most convenient to himself thereby waiving all for-

465 feiture for the non-payment of said Rents at the time and office Specified in said leases and by resolution of the City Council of said City. That after the making of the agreement hereinafter mentioned between said City and the Cleveland, Columbus and Cincinnati Railroad Company on the thirteenth day of September, 1849, and from thence to about the middle of February, 1850, said Fitch collected rents on said leases and on said other leases for said Railroad Company and paid the same to Truman P. Handy, Treasurer of said Company as your Orators have been informed since the first of April, 1850, and believe that some time in February, 1850, as your Orators are informed and believe said City Council assigned said leases technically (the same being in fact assigned in September, 1849) to said Railroad Company and about the same time appointed Matthew J. Williamson Secretary of said Company, to collect rents on said leases but of said assignment and of said appointment your Orators were ignorant until informed of the same the fourth day of April, 1850, by said Fitch. Your Orators further state that said Fitch not calling on them for said rents on the first day of April nor for several days thereafter your Orators on the fourth day of April called on John W. Cary, the then attorney of the City, and who stated he had no authority to receive said rents, and your Orators on enquiring further learned as before stated that said leases had been assigned as aforesaid and said Williamson appointed agent as aforesaid and on calling on said Williamson he refused to receive any further rents on said premises saying, that the Directors of said company had directed him not to receive any more rents from your Orators; and your Orators are informed and believe that said Directors prior to said first day of April, 1850, had determined by resolution not to receive any more rent of your Orators. Your Orators further state that William B. Lloyd (whose residence is unknown to your Orators) and Hezekiah Camp of said county (both of whom your Orators pray may be made defendants to this bill) pretending to have some claim (which your Orators believe to have been petitioners') to said Bath street, commenced in this court nine

suits in ejectment for the recovery of said leased premises and other lots on Bath street, during the vacation after November Term, 1845, which suits were entitled John Doe Ex. Dem. of William B. Lloyd et al. vs. Richard Doe," That said City by its Mayor and city attorney informed your Orators that said city would enter into the consent Rule and defend all said suits including those brought to recover the premises occupied by your Orators. Said City did enter into the consent rule in all of said cases and in good faith as your

466 Orators then supposed, one of said suits was tried in said court at its June term, 1848, and judgment rendered for the plaintiffs that he recover the premises claimed in said suit, and said city thereupon by writ of error removed said cause to the Supreme Court from which it was reserved to court in Banc, where it is now pending, your Orators further state that said Camp & Lloyd are the sole owners and party plaintiffs in interest and have been in all of said suits, your Orators further state that the Cleveland, Columbus and Cincinnati Railroad Company were incorporated in March, 1846, (which your Orators pray may *be* also be made defendants) and empowered to lay a railroad from said City of Cleveland to Cincinnati and a copy of the various acts incorporating and regulating said Company are attached to and made part of this Bill. And your Orators charge that said City of Cleveland, The Cleveland, Columbus and Cincinnati Railroad Company, Hezekiah Camp and William B. Lloyd enter- into a combination for the purpose of defrauding your Orators in the premises and for depriving them of said leased premises and all improvements thereon, and on the thirteenth day of September, 1849, and while said suits for said leased premises and for other said lots were pending in said Court of Common Pleas. The said City and the said Railroad Company with the knowledge, consent and connivance of said Camp & Lloyd entered into a written agreement by which said City conveyed all right and title to said Bath street including the aforesaid leased lots which had been possessed and used by your Orators. Lot- Seven and Eight since the first of April, 1848, and Lot Six since its assignment by Mathivet and Davis. By said agreement said Railroad Company took said Bath street property subject to all legal claims either in law or equity of any and every person, and agreed to save said City harmless from all damages to which the City might be liable from the eviction of its tenants and its shameful violation of faith to your Orators, it was further stipulated in said agreement that all leases of lots lying between the South line of Bath street and a line parallel therewith and 282 feet northwardly therefrom given to said city, should by said city be assigned to said company and that said company should collect said rents paying to said city two-thirds of the same until said company should deliver to said city, free of incumbrances 100 feet fronting on the river and lying between the South line of Bath street and a line parallel therewith and 282 — therefrom northwardly, and your Orators' aforesaid lots except eighteen feet lie within the boundaries aforesaid of which leases were assigned as aforesaid and the rents of which were collected by said Fitch as aforesaid, and

paid as aforesaid to said Treasurer of said Company. And
467 your Orators pray that said agreement may be set forth in
the answer of said City and Company and when so set forth
may be made a part of this bill. And your Orators are informed
and believe that said company by virtue of said agreement have since
its date received the rents of your Orators' premises. And your
Orators charge that said company is now and has been since said
agreement the Landlord of your Orators. And your Orators are in-
formed and believe and so charge the fact to be that at the time or
immediately after, said company had made said agreement with said
City, it entered into an agreement with said Camp and Lloyd, by
which in consideration of said Company's leasing to said Camp and
Lloyd your Orators' said premises and for other consideration un-
known to your Orators (but which they pray may be disclosed in the
answers of said defendants), said Camp and Lloyd released all their
pretended title to said Bath street to said Company, and also gave
said Company the right to control said suits in said Common Pleas
Court, to which arrangement said City assented by virtue of said
agreements, made without the knowledge of your Orators. The
said Company at the October Term of the Court of Common Pleas,
1849, took judgment in favor of said suits for the land for which
said suits were brought including your Orators' leased premises and
discontinued the other five suits, and all this was done without trial
as by default and with the assent of said City which had promised
your Orators to defend said suits and done with the consent of said
Camp and Lloyd and without the knowledge of your Orators. That
all of said judgments are in full force owned by said company as
your Orators are informed and believe. And said company threat-
ens to use said judgments as your Orators are informed and believe
to dispossess their tenants. Your Orators by issuing a writ or habere
facias possessionem on the judgments affecting your Orators' said
lots. Your Orators further say that if they are removed from said
premises now it will damage them ten thousand dollars and they are
informed and believe that said City has no property to that amount
subject to execution, and your orators will be wholly unable if
evicted to recover said damages of said City. Your Orators are
ready and willing to pay the rents due on said leases and hereby
offer so to do, and with this will bring into court one hundred and
twelve 50-100 dollars, the same being the rent due on the first day of
April, 185— for this court to apply as equity — require. Your Orators
therefore, inasmuch as they are remediless at law pray Your Honors
that said City of Cleveland; The Cleveland, Columbus & Cincinnati
Railroad Company, Hezekiah Camp and William B. Lloyd
468 their agents and servants may be enjoined during the con-
tinuance of said leases from issuing or causing to be issued
any writ or writs of possession on either of said judgments affecting
your Orators' land and may be enjoined from disturbing your Ora-
tors in the quiet possession of said premises, and that a writ of Sub-
pœna may issue from this Hon. Court to said City, said Company
and said Camp & Lloyd and that they and each of them may be com-
pelled to answer all and singular the premises as if here particularly

interrogated thereto. And your Orators pray that on the final hearing of this cause your Honors will decree to them the possession of said leased premises on due payment of rent and for such other and further relief as equity and good conscience require.

B. WHITE,
Comp'ts' Solis.

Lemuel Crawford one of said Complainants being duly sworn on his oath says that all the several matters and things *are* stated in the foregoing bill as from the information of others I believe to be true and that all the several other matters and things therein set forth are true in substance and in fact. Said Crawford further says that *if* it will injuriously affect the rights of the foregoing complainants in the premises to give said Respondents notice of this application for injunction.

LEMUEL CRAWFORD.

Sworn to and subscribed before me this fifth day of April, A. D. 1850.

[SEAL.]

JNO. C. GRANNIS,
Notary Public.

And further to maintain the issues on their part, the defendants offered in evidence, from the record in the case of Price and Crawford vs. the City et al., the Separate Answer of the City of Cleveland. (To which the plaintiff objected; which objection was overruled by the court; to which ruling of the court plaintiff then and there excepted.)

Said Separate Answer reads as follows:

The Separate Answer of the City of Cleveland to a Bill in Chancery Exhibited in the Court of Common Pleas of Cuyahoga County, Ohio, against said City and Others by Lemuel Crawford and William Price.

This respondent saving and reserving all benefit of exceptions and for answer to so much and such parts of said Bill as Respondent is advised that it is material to answer says that she admits that complainants are engaged in selling coal and obtained a lease of a lot for a coal yard as charged in said Bill. She further admits that the complainants have occupied said lot as alleged but as to the value of the improvements made on said lot by the complainants or the extent of the business done or contemplated to be done by them on the premises this Respondent has no knowledge, opinion or belief and can neither admit nor deny the allegations respecting the same. Respondent further admits that Jabez W. Fitch was the officer appointed to receive the rents until February 5th, 1850, when M. J. Williamson was by resolution of the City Council appointed Receiver in his place, which accrued to the City of Cleveland under said lease but does not admit that said Fitch made an arrangement to receive said rent in any manner different from that re-

quired by the terms of the lease being wholly ignorant whether said arrangement was or was not made by him. But this Respondent insists that said Fitch had no authority to make such arrangements, and that if made as alleged in the Bill it would have no legal effect except insofar as payments were made and received by him under it while his authority to receive payment continued. Respondent further answering denies that any payment of rents has been made on said lease since that which became payable by the terms of the lease on the first day of January, 1850, to-wit: the quarter accruing between October 1st, 1849, and January 1st, 1850, and which by the terms of the lease became payable on the 1st day of January, 1850. Respondent admits that the rent for that quarter was duly paid but denied all knowledge of any payment having been made for any rent accruing since that payment. Respondent further answering admits that William B. Lloyd and Hezekiah Camp commenced several suits in ejectment for the possession of the tracts of land commonly called Bath street as charged in said Bill one of which suits embraced lots 7 and 8, now claimed by the complainants but was then held by D. Upson, and another of the suits embraced lot 6 then held by Michael Davis that said Upson and Davis were duly and legally served with process in Ejectment and thereby became to all legal extent party to said suit. Respondent also admits that the City of Cleveland did enter into the usual consent rule and undertook the defense of all said suits and Respondent believes that this undertaking was made in good faith with the purpose of making the best possible defense in all the cases. Respondent also admits that one of said suits (but not the one embracing the premises obtained by said complainants) was tried and a verdict and judgment rendered in favor of said Camp & Lloyd, that said suits was removed to the Supreme Court and reserved for decision by the court in Bank as alleged in said Bill but Respondent denies that said cause is still depending in the Court in Bank or elsewhere for decision but

470 alleges that if the said suit is still open and undetermined on the journal of the court it is so merely from an accidental omission of some of the parties or attorneys to have the proper entry made disposing of said cause and further alleges that said *court* was long since settled in the manner hereinafter set forth and should long since have been disposed of by a judgment confirming the judgment of the Court of Common Pleas in said lease. Respondent admits the act incorporating the company hereinafter named, the object and power of the company as alleged and shown in this Bill, that this Respondent utterly denies any and all combination between the said Cleveland, Columbus and Cincinnati Railroad Company and said City of Cleveland and said Camp and Lloyd or between said City and any other party or parties whatever for the purpose of defrauding said complainants or any other person or persons either at the time alleged in said Bill or at any other time or for the purpose of interfering with any rights and privileges in any manner inconsistent with fair legal and honorable dealing. Respondent has no knowledge and therefore neither admits nor denies that on the 8th of August, 1849, a contract was made between said Railroad

Company and said Camp & Lloyd as stated between — this respondent admits that on the 13th of September, 1849, a contract was made between said Railroad Company and this Respondent which last contract had relation to said Bath street property including the premises claimed by complainants a copy of which is annexed to and made part of the answer of said Railroad Company in this cause of which Respondent begs leave to refer. But Respondent alleges that each of said contracts was the result of negotiations wholly unconnected with and independent of the other, that there was no contract or concurrence between said city and said Camp & Lloyd, but that in the contrary the relation between them was during the whole time from the commencement of the suits above referred to the time when said contracts were consummated entirely adversary that the circumstances and as — which said contracts were negotiated and consummated were as follows that is to say: That after the location of the Railroad from Columbus to Cleveland it became necessary in the opinion of the Directors to obtain the whole of the tract of Land called Bath street and they made a formal appropriation of the same by resolution of the 18th of September, 1848, and the entire title of that tract was involved in a controversy between the City of Cleveland and said Camp & Lloyd that suit was then depending for the possession of said premises that a suit had already been decided against the *only* was then depending in the Supreme Court of Ohio

on Exceptions to the Judgment of the Court of Common

471 Pleas that the opinions not only of people generally but also of men professing to understand the legal questions involved

on the controversy differed so much as to the probable result that it was impossible to anticipate the event that it was the interest and wish of the Respondent to get clear of all controversies whether legal or otherwise and for that reason this Respondent — unwilling to have said Company obtain possession of said property by the power given them by their charter but proposed and believed it to be for the interest of this Respondent and all parties having any interest in said property to make an amicable arrangement by which the said Company might be invested with all the rights of this Respondent in said property. Upon these views this Respondent being compelled to transfer to said company said property and preferring to do so under a negotiation than to have it taken under and by virtue of said company's charter and appropriation and desirous of avoiding all controversy with said company for the convenience and advantage of this Respondent the said negotiations and contract were made between said company and respondent but this respondent has in no instance had the wish or purpose of obtaining any unfair or dishonest or fraudulent advantage of said complainants or of any other party or person having a claim or interest in said premises or any part thereof nor has said company so far as Respondent knows or believes *being* guilty of any act of bad faith or injustice toward any person or party intrusted in said premises or any portion thereof Respondent admits it to be true that by the terms of the contracts between the City of Cleveland and said company made on the 13th day of September, 1849, as aforesaid said company took the interest

of the said City in the said Bath street property subject to all the rights and privileges of all other persons which would be legally enforced against the property had the city continued to hold the same and also assumed all the legal liabilities to other persons which rested on the City in the relation to said property up to that time but this Respondent utterly denies that the City or said Company or the assignees in the premises *was* or ever could become liable to the complainants or other lessees of said premises on account of any failure of title in the City. And this Respondent further answering says that said City in the leases now held or claimed by the complainants as well as in all other cases granted by her on Bath street guarded herself in the strictest manner against any implied liability to guarantee the possession of the lots leased and provided that an eviction of the leases should merely stop rents but that said city should not be liable to pay any damages. Respondent further answering ad-

472 mits it to be true that judgment was rendered in the Court of Common Pleas in favor of said Camp & Lloyd in the suits embracing the premises claimed by the complainants in pursuance of the agreement made by said company with said Camp and Lloyd on the said 8th day of August, A. D. 1849, as aforesaid not because the contests of the suits *was* given said company as alleged in the Bill but because said company as this Respondent is informed and believes having succeeded to the rights of the City as aforesaid and having by said agreement with said Camp and Lloyd compromised all matters in controversy ceased to make a further defense to said suit and permitted judgment to be entered. And this Respondent is informed and believes that said compromise was a fair and reasonable one and such as said company was freely justified in making that there was nothing in the relation which had previously existed between the said city and the complainants, which required the city while holding its original interest against said company after the contract of the 13th of September, 1849, to persist in maintaining a series of doubtful and expensive law suits when a peaceable compromise of the same would be made. Respondent further is informed and believes that in making the same compromise the Railroad Company obtained from said Camp and Lloyd the best terms which they would be induced to grant and so far as these terms seemed to said Company the rights which said city has previously claimed. Respondent is informed and believes that it will furnish to the various lessees a full protection against the reverse claim of said Camp and Lloyd and protect them in their several leases so far as they themselves have performed their covenants in the same. But this Respondent is informed and believes that by the terms of said compromise said company failed to obtain any interest in or control over any part or portion of the premises claimed by the complainants except a small part in the lot- 6 and 7 and that said company disclaims any interest in or *under* over the residue of the lots claimed by said complainants. Respondent further answering says that it is not true so far as it is known to the Respondent that the complainant- or either of them or any person on their behalf ever paid or tendered to said Fitch or to said Williamson or any other person whether au-

thorized to receive it or not the quarter rent which was by the terms of the lease due and payable on the 1st day of January, 1850, or that any tender was made of any rent on the 1st day of April, 1850, although it is informed that some time after the first day of April and after said lease was forfeited a tender was made of some portion but not of the whole of the rent which had become due. But this Respondent is informed and believes that the tender was made
473 after said company by the Board of Directors has resolved that no more rent should be received and the leases which respondent claims were all forfeited at the time said resolution was passed. And now having fully answered said Bill this Respondent prays to be discharged, hence with costs.

JOHN E. CARY,
City Attorney.

The COURT: What was the date when that answer was filed?

Mr. CLARKE: It was first filed on the 29th day of January, 1851; refiled March 15, 1851.

And further to maintain the issues on their part, the defendants offered in evidence the copy of the Leases referred to in the foregoing Bill, to-wit:

This Indenture of Lease made the first day of April, 1848 by and between the City of Cleveland, party of the first part and Pierre Mathivet party of the second part,

Witnesseth; That said party of the first part has Let and Leased and does hereby let and lease to the said party of the second party the following described lot of land, Situate in the City of Cleveland, Cuyahoga County, Ohio, being part of that tract of land commonly known as Bath street designated on the plan of said tract made by Abaz Merchant, dated February 4th, 1845 and now on file in the office of the Clerk of the City of Cleveland and such subdivisions alterations and additions as have been or may be made by the order or approval of the city council as lot number six (6) at and for the rents and upon the conditions hereinafter specified.

To have and to hold the same to the said party of the second part the heirs, executors or administrators of said party from the first day of April, 1848 until the thirty-first day of March, 1853. And the said party of the second part doth agree to pay for the same the sum of one hundred and fifty dollars (\$150) rent per annum during the continuance of this lease to be paid Quarterly in advance, on the first days of January, April, July and October in each and every year during the continuance of this lease. Provided that when the first days of said month shall fall upon Sunday the Second day shall be the regular quarter day. And it is expressly understood and agreed by and between the parties to this lease that upon every quarter day all rents upon this lease previously due and unpaid together with the next quarter in advance shall be due and payable, and that all rents shall be due and pay-

able at the office of such officer or agent as at the time such
 474 rents become due and payable shall be by resolution of the
 city council of the City of Cleveland, entrusted with the
 management and collection of the Bath street Rents. And it is
 mutually agreed by and between said parties that said premises shall
 be used in a careful and proper manner that no excavations shall
 be made in said premises and no portions of the surface removed
 so as to reduce the average elevation of the same. That in case of
 failure of title or disturbance of the possession of said party of the
 Second part, said party of the first part shall not be liable to pay
 damages, but in case said party of the second part shall be legally
 evicted no rent shall be charged for the time said party shall be
 kept out of possession. And it is further agreed that all buildings
 and improvements made or to be made upon said premises shall
 be holden for all rents accruing or that may accrue under this lease
 and no improvements are to be removed from said premises while
 there is rent due and unpaid. That said party of the second part
 shall pay all taxes upon any improvements which shall be made
 by said party on said premises and shall have the privilege of re-
 moving said improvements at the said expiration of said lease pro-
 vided all rents shall then be paid but if at any time during the
 continuance of this lease the rents or any portion thereof shall be
 unpaid after the same shall become due then the said party of the
 first part may avoid this lease and enter into the possession of the
 demised premises and sue for and recover all rent due at the rate
 aforesaid up to the time of such entry. For which purpose the
 said party of the second part hereby waives any and all demands of
 rent.

In Witness Whereof the said party of the first part has caused
 duplicates hereof to be signed and sealed by the Mayor and the
 said party of the second part has also signed and sealed duplicates
 hereof the day and year first above written:

[Seal City of Cleveland.]

L. A. KELSEY, *Mayor*. [SEAL.]
 P. MATHIVET. [SEAL.]

In presence of
 J. W. FITCH,
 P. HAY,
 M. BARRON.

THE STATE OF OHIO,
Cuyahoga County, ss:

Before me personally come Lorenzo A. Kelsey, Mayor of Cleve-
 land and acknowledged the signing and sealing of the fore-
 475 going lease to be his free and voluntary act and deed. Be-
 fore me.

Cleveland, May 4th, 1848.

[SEAL.]

JABEZ W. FITCH,
Notary Public.

On which said lease was the following endorsement to-wit:—"City of Cleveland to Pierre Mathivet, lease 25 feet on Bath street \$150 per year \$37.50-100 per quarter—\$37.50 Rec'd May 4th 1848 of Pierre Mathivet \$37.50 dollars being first quarter's rent due J. W. Fitch, City Atty. \$37.50 Rec'd Aug. 18, 1848 thirty seven 50-100 dollars being second quarter's rent, J. W. Fitch. \$37.50 Paid third quarter's rent Oct. 25, 1848 on lot on Bath Street J. W. Fitch, \$37.50 paid fourth quarter's rent Feby. 12, 1849, J. W. Fitch. \$37.50 paid 1st quarter June 11, 1849 J. W. Fitch \$37.50 paid 2nd quarter's Aug. 21st, 1849 J. W. Fitch. \$37.50 paid 3rd quarter's rent Dec. 12, 1849, J. W. Fitch. \$37.50 paid 4th quarter's rent Feby. 7, 1850, J. W. Fitch.

And further to maintain the issues on their part, the defendants offered in evidence the testimony of HOWARD H. BURGESS, recalled as follows:

By Judge SANDERS:

Q. In response to our subpoena you brought in this morning certain papers which I would like to have identified (handing witness papers). Will you please state to the court and jury whether those four papers are part of the files in your office?

A. Yes, sir.

Q. You found them among the city files?

A. Yes, sir, part of the city records.

The papers above referred to were subsequently offered in evidence.

And further to maintain the issues on their part the defendants The Cleveland & Pittsburgh Railroad Company, and the Pennsylvania Company, offered in evidence "An act to incorporate the Cleveland and Pittsburgh Railroad Company" found in Vol. 34 Ohio Local Laws, page 576.

A true copy of same is as follows, to-wit:

"An Act to Incorporate the Cleveland and Pittsburgh Railroad Company.

SEC. 1. Be it Enacted by the General Assembly of the State of Ohio, that Van R. Humphrey, Heman Oviatt, D. B. Bostwick, Darius Lyman, and Joseph De Wolf, of Portage County; Samuel Starkweather, Charles Whittlesey and John W. Willey, of Cuyahoga County; Robert Forbes, Isaac Wilson, James Robertson, John Wallis, George McCook and John Patrick, of Columbiana county, be, and they are hereby appointed commissioners, under the direction of a majority of whom, subscriptions may be received to the capital stock of the Cleveland and Pittsburgh Railroad Company, hereby incorporated; and they, or a majority of them, may cause books to be opened in the counties of Cuyahoga, Portage and Columbiana, and at such other time and place as they may direct, for the purpose of receiving subscriptions to the

capital stock of said company, after having given thirty days' notice of the time and place of opening the same; and that upon the first opening of the books, they shall be kept open for at least ten days in succession, from ten o'clock A. M. until 2 o'clock P. M.; and if, at the expiration of that period, such a subscription to the capital stock of said company as is necessary to its incorporation, shall not have been obtained, then said commissioners or a majority of them, may cause said books to be opened, from time to time, after the expiration of said ten days, and for the space of three years thereafter; and if any of the said commissioners shall die, resign, or refuse to act during the continuance of the duties devolved upon them by this act, another or others may be appointed in his or their stead by the remaining commissioners, or a majority of them.

SEC. 2. That the capital stock of the Cleveland and Pittsburgh Company, shall be fifteen hundred thousand dollars, and shall be divided into shares of fifty dollars each; and it shall and may be lawful for said corporation to commence the construction of the said railroad or way, and enjoy all the powers and privileges conferred by this act (as) soon (as) the sum of one hundred thousand dollars shall be subscribed to said stock.

SEC. 3. That all persons who shall become stockholders pursuant to this act, shall be, and they are hereby created a body corporate, and shall be and remain a corporation forever, under the name of the Cleveland and Pittsburgh Railroad Company; and by that name, shall be capable in law of purchasing, holding, selling, leasing and conveying estates, real, personal and mixed, so far as the same shall be necessary for the purposes hereinafter mentioned, and no further; and shall have perpetual succession; and by said corporate name, may contract and be contracted with, sue and be sued, and may have and use the common seal, which they shall
477 have power to alter or renew at their pleasure; and shall have, enjoy, and may exercise all the powers, rights and privileges, which corporate bodies may lawfully do, for the purposes mentioned in this act.

SEC. 4. That upon all subscriptions there shall be paid at the time of subscribing, to the said commissioners, or their agents appointed to receive such subscriptions, the sum of five dollars on every share subscribed; and the residue thereof shall be paid in such installments, and at such times, as may be required by the president and directors of said company; Provided, no payment other than the first shall be demanded, until at least thirty days' public notice of such demand shall have been given by said president and directors, in some newspaper of general circulation in the State of Ohio; and if any stockholder shall fail or neglect to pay any installment, or part of said subscription thus demanded, for the space of sixty days next after the time the same shall be due and payable, the said president and directors, upon giving at least thirty days' previous notice thereof, in manner aforesaid, may and they are hereby authorized to sell at public vendue so many of the shares of the said delinquent stockholder or stockholders as shall be necessary to pay such installment and the expenses of advertising and sale, and

transfer the shares so sold to the purchasers; and the residue of the money arising from such sale, after paying such installment and expense, shall be paid to said stockholders on demand.

SEC. 5. That at the expiration of ten days, for which the books are first opened, if seven hundred and fifty shares of said capital stock shall have been subscribed, or if not as soon thereafter as the same shall be subscribed, if within three years after the first opening of the books, the said commissioners, or a majority of them, shall call a general meeting of the stockholders at such time and place as they may appoint, and shall give at least sixty days' previous notice thereof; and at such meeting, the said commissioners shall lay the subscription books before the stockholders then and there present; and thereupon the said stockholders or a majority of them, shall elect twelve directors by ballot; a majority of whom shall be competent to manage the affairs of said company; they shall have the power of electing a president of said company, either from among said directors or others, and of allowing him such compensation as they may deem proper; and in said election,
478 and on all other occasions wherein a vote of the stockholders of said company is to be taken, each stockholder shall be allowed one vote for every share owned by it, him or her; and any stockholder may depute any other person to vote and act for him or her, as his or their proxy; and the commissioners aforesaid, or any three of them, shall be judges of the first election of said directors.

SEC. 6. That to continue the succession of the president and directors of said company, twelve directors shall be chosen annually, on the third Monday in October, in every year, in the town of Ravenna, in the County of Portage, or at such other place as a majority of the directors shall appoint; and if any vacancy shall occur by death, resignation, or otherwise, of any president or director, before the year for which he was elected has expired, a person to fill such vacant place for the residue of the year may be appointed by the president and directors of said company, or (a) majority of them; and that the president and directors of said company shall hold and exercise their offices until a new election of president and directors; and that elections which are by this act, or the by-laws of the company to be made on a particular day, or at a particular time, may be made at any time within thirty days thereafter.

SEC. 7. That a general meeting of the stockholders shall be held annually, at the time and place appointed for the election of president and directors of said company; that meetings may be called at any time during the interval between the said annual meetings, by the president and directors, or a majority of them, or by the stockholders owning at least one-fourth of the stock subscribed, upon giving at least thirty days' public notice of the time and place of holding the same; and when any such meetings are called, by the stockholders, such notice shall specify the particular object of the call; and if, at any such called meeting, a majority in value of the stockholders of said company are not present in person or by

proxy, such meeting shall be adjourned from day to day without transacting any business, for any time, not exceeding three days; and if, within said three days, stockholders, holding a majority in value of the stock subscribed, do not thus attend, such meeting shall be dissolved.

SEC. 8. That at the regular meetings of the stockholders of said company, it shall be the duty of the president and directors in office for the previous year, to exhibit a clear and distinct statement of the affairs of the company; that at any called meeting of the stockholders, a majority of those present in person or by proxy, may require similar statements from the president and directors, whose duty it shall be to furnish them when thus required; and that at all general meetings of the stockholders a majority in value of the stockholders of said company may remove from office any president or any of the directors of said company, and may appoint officers in their stead.

SEC. 9. That any president and director of said company, before he acts as such, shall swear or affirm, as the case may be, that he will well and truly discharge the duties of his said office to the best of his skill and judgment.

SEC. 10. That the said president and directors, or a majority of them, may appoint all such officers, engineers, agents, or servants whatsoever, as they may deem necessary for the transaction of the business of the company, and may remove any of them at their pleasure; that they, or a majority of them, shall have the power to determine by contract the compensation of all engineers, officers, agents or servants, in the employ of said company; and to determine by their by-laws the manner of adjusting and settling all accounts against the said company; and, also, the manner and evidence of transfers of stock of said company; and they, or a majority of them, shall have the power to pass all by-laws, which they may deem necessary or proper for exercising all the powers vested in the company hereby incorporated, and for carrying the objects of this act into effect: Provided, only, That such by-laws shall not be contrary to the laws of this State or of the United States.

SEC. 11. That the said corporation shall be, and they are hereby vested with the right to construct a double or single railroad or way, from Cleveland, in the county of Cuyahoga, on the most direct and least expensive route, to some point in the direction of Pittsburgh, on the State line between Ohio and Pennsylvania, or on the Ohio river; to transport, take and carry property and persons upon the same, by the power and force, and steam, of animals, or of any mechanical or other power, or of any combination of them, which the said corporation may choose to employ.

SEC. 12. That the president and directors of said company shall be, and they are hereby invested with all rights and powers necessary for the location, construction and repair of said road, not exceeding one hundred feet wide, with as many sets of tracks as the said president and directors may deem necessary, and they may cause to be made, contract with the others for making the said railroad, or any part of it; and they or their agents, or those

with whom they may contract for making any part of the same; may enter upon and use and excavate any land which may be wanted for the site of said road, or for any other purpose necessary and useful in the construction or in the repair of said road or its works, and that they may build bridges, may fix scales and weights, may lay rails, may take and use any earth, timber, gravel, stone or other materials, which may be wanted for the construction or repair of any part of said road, or any of its works; and may make and construct all works whatsoever, which may be necessary in the construction or repair of said road.

SEC. 13. That the president and directors of said company, or a majority of them, or any person authorized by them, or a majority of them, may agree with the owner or owners of any land, earth, timber, gravel or stone, or other materials, or any improvements which may be wanted for the construction or repair of said road, or any of their works, for the purchase or use, or occupation of the same; and if they cannot agree, or if the owner or owners, or any of them, be a married woman, insane person, or idiot, or out of the county in which the property wanted may lie, when such land and materials may be wanted, application may be made to any justice of the peace of such county, who shall thereupon issue his warrant, under his hand and seal, directed to the sheriff of said county or to some disinterested person if the sheriff shall be interested, requiring him to summon a jury of twelve men, inhabitants of said county, not related or in any wise interested to meet on the land, or near to the property or materials, to be valued on a day named in said warrant, not less than ten nor more than twenty days after the issuing of the same; and if, at the said time and place, any of said persons summoned do not attend, the said sheriff or summoner shall immediately summon as many persons as may be necessary, with the persons in attendance, to furnish a panel of twelve jurors in attendance; and from them, each party, or its, his or her, or their agent, the sheriff or summoner, for him, her, it or them, may strike off

481 three jurors, and the remaining six shall act as a jury of inquiry of damages; and before they act as such, the said summoner or sheriff shall administer to each of them an oath, or affirmation, as the case may be, that they will faithfully and impartially value the damages which the owner or owners will sustain by use or occupation of the same, required by said company; and the jury estimating the damages, if for the ground occupied by said road, shall take into the estimate the benefits resulting to said owner or owners, by reason of said road passing through or upon the land of such owner or owners, towards the extinguishment of such claim for damages; and the said jury shall reduce their inquisition to writing, and shall sign and seal the same; and it shall then be returned to the clerk of the Court of Common Pleas for said county, and by such clerk filed in his office, and shall be confirmed by the said court at its next session, if no sufficient cause to the contrary be shown, and when confirmed, shall be recorded by said clerk, at the expense of said company; but if set aside, the court may direct another inquisition to be taken in the manner above prescribed; and

such inquisition shall describe the property taken, or the bounds of the land condemned; and such valuation, when paid or tendered to the owner or owners of said property, or his, her, or their legal representatives shall entitle said company to the full right to said personal property and the use and occupation of said landed property, for the purpose of said road, thus valued, as fully as if it had been conveyed by the owner or owners of the same; and the valuation, if not received when tendered, may, at any time thereafter, be received from the company without cost, by the owner, or owners, his, her, or their legal representative or representatives; and that such sheriff or summoner, and jurors, shall be entitled to demand and receive from the said company, the same fees as are allowed for like services, in cases of fixing the valuation of real estate, previous to sale under execution.

SEC. 14. That whenever in the construction of said road, it shall be necessary to cross or intersect any established road or way, it shall be the duty of the said president and directors of said company so to construct the said railroad across such established road or way, as not to impede the passage or transportation of persons or property along the same, or when it shall be necessary to pass through the land of any individual, it shall also be their duty to provide for such individual proper wagon ways across said road, from one part of his land to another without delay.

482 SEC. 15. That if said company should neglect to provide proper wagon ways across said road, as required by the fourteenth section of this act, it shall be lawful for any individual to sue said company, and to be entitled to such damages, as a jury may think him or her, entitled to, for such neglect on the part of said company.

SEC. 16. That if it shall be necessary for such company, in the selection of the route, or construction of the road to be by them laid out or constructed, or any part of it, to connect the same with, or to use any turnpike road, or bridge, made or erected by any company or persons incorporated, or authorized by any law of this State, it shall be lawful for the said president and directors, and they are hereby authorized, to contract or agree with any such other corporation or persons, for the right to use such road or bridge, or for the transfer of any of the corporate or other rights or privileges of such corporation or persons, to the said company hereby incorporated; and every such other incorporation, or persons incorporated by, or acting under the laws of this State, is, and are hereby authorized to make such an agreement, contract, or transfer, by and through the agency of the person authorized by their respective acts of incorporation, to exercise their corporate powers, or by such persons as by any law of this State, are entrusted with the management and direction of said turnpike road or bridge, or any of the rights and privileges aforesaid; and any contract, agreement or transfer, made in pursuance of the power and authority hereby granted, when executed, by the several parties under their respective corporate seals, or otherwise legally authenticated, shall vest in the company hereby incorporated, all such road, part of road, rights and privileges, and

the right to use and enjoy the same, as fully, to all intents and purposes as they now are, or might be used and exercised by the said corporation, or persons in whom they are now vested.

SEC. 17. That said president and directors shall have power to purchase with the funds of the company, and place on any railroad constructed by them, under this act, all machines, wagons, vehicles, or carriages of any description whatsoever, which they may deem necessary or proper, for the purpose of transportation on said road; and that they shall have power to charge for tolls upon, and the transportation of persons, goods, produce, merchandise, or property of every description whatsoever, transported by them along
483 said railway, any sum, not exceeding the following rates: On all goods, merchandise, or property of any description whatsoever, transported by them, a sum not exceeding one and a half cents per mile for toll, and five cents per mile per ton for transportation, on all goods, produce, merchandise, or property of any description whatsoever, transported by them or their agents; and for the transportation of passengers, not exceeding three cents per mile for each passenger; and it shall be lawful for any other company or any person or persons whatsoever, paying the tolls aforesaid, to transport any persons, merchandise, produce or property of any description whatsoever, along said road or any part thereof; and the said road, with all their works, improvements and profits, and all machinery on said road for transportation are hereby vested in said company, incorporated by this act, and their successors forever; and the shares of the capital stock of said company shall be deemed and considered personal property, transferable by assignment, agreeably to the by-laws of said company.

SEC. 18. That any other railroad company now or hereafter to be chartered by law of this State, may join and connect said road with the road hereby contemplated, and run cars upon the same, under the rules and regulations of the Cleveland and Pittsburgh Railroad Company, as to the construction and speed of said cars; and full right and privilege is hereby reserved to the State, or the citizens, or any company incorporated by authority of this State, to cross the railroad hereby incorporated: Provided, That in so crossing, no injury shall be done to the works of the company hereby incorporated.

SEC. 19. That the said president and directors shall, semi-annually, declare and make such dividend as they may deem proper, of the net profits arising from the resources of said company, deducting the probable amount of outstanding debts and the necessary current and contingent expenses, and that they shall divide the same amongst the stockholders of said company in proportion to their respective shares.

SEC. 20. That if any person or persons, shall wilfully, or by any means whatsoever, injure, impair, or destroy any part of said railroad, constructed by said company under this act, or any of the work, buildings, or machinery, of said company, such person or persons so offending shall, each of them, for every offence, forfeit

and pay to the said company a sum not exceeding three fold
 484 the damages; which may be recovered in the name of the
 company, by an action of debt, in the Court of Common
 Pleas, for the county wherein the offence shall be committed; and
 shall also be subject to an indictment in said court, and upon con-
 viction of such offence shall be punished by fine and imprisonment,
 at the discretion of the court.

SEC. 21. That if said railroad shall not be commenced in three
 years from the passage of this act, and shall not be finished within
 fifteen years from the time of the commencement thereof, then this
 act to be null and void.

SEC. 22. That if the Legislature of this State shall, after the ex-
 piration of thirty-five years from the passage of this act, make pro-
 vision, by law, for the re-payment to said company of the amount
 expended by them in the construction of said railroad, and the
 value of the necessary permanent fixtures thereto at the time with
 an addition of fifteen per cent. thereon, together with interest on
 the cost of the road, at the rate of six per cent. per annum, unless
 the dividends shall have amounted to six per cent. per annum; of
 which expenditure an accurate statement in writing, attested by the
 oaths or affirmation of the officers of said company, shall be sub-
 mitted to the General Assembly, if required; then said road and
 fixtures shall rest in and become the property of the State of Ohio.

SEC. 23. Whenever the dividends of said company shall amount
 to a sum not exceeding the amount of six per cent. per annum upon
 the cost of said road, and the necessary expenses of the same, the
 Legislature of this State may impose such reasonable taxes on the
 amount of such dividends as may be received from other railroad
 companies.

WILLIAM MEDILL,
Speaker pro tem. of the House of Representatives.
 ELIJAH VANCE,
Speaker of the Senate.

March 14, 1836.

And further to maintain the issues on their part the defendants
 The Cleveland & Pittsburgh Railroad Company, and the Pennsyl-
 vania Company, offered in evidence Act found on page 401, Ohio
 Local Laws, Vol. 43, and a true copy of same is as follows, to-wit

485 "An Act to revive and amend the act entitled "An act
 to incorporate the Cleveland and Pittsburgh Railroad
 Company," passed March 14, 1836.

SEC. 1. Be it enacted by the General Assembly of the State of
 Ohio, That the act entitled "an act to incorporate the Cleveland and
 Pittsburgh Railroad Company," passed March fourteenth, one thou-
 sand eight hundred and thirty-six, be and the same is hereby re-
 vived, except so far as the same shall be inconsistent with the pro-
 visions of this act; and that John S. Blakely, James, Farmer, James
 Stewart, George McCook, Joshua A. Dawson, Albert G. Catlett,

Zadock Street, and John Dellenbach, of Columbiana County; John W. Allen, Charles Bradburn, Irad Kelley, Samuel Starkweather, Philo Scovill, Thomas Bolton, and Samuel Williamson, of Cuyahoga County; Cyrus Prentis, Robert F. Paine, Pimon C. Bennett, William R. Henry, of Portage County; William McCullough, of Jefferson County; Sylvester Thompson and Birdsey Booth, of Summit County, are hereby appointed commissioners, instead of those named in the above recited act, and the said commissioners hereby appointed, or a majority of them, are hereby authorized to proceed, after having given thirty days' notice in one newspaper printed in each of the above named counties, to cause books to be opened for the purpose of receiving subscriptions to the capital stock of said company in the manner provided for in the above recited act, by which they shall, in all respects, be governed, except so far as the same may be inconsistent with this act.

SEC. 2. The railroad, mentioned in the above recited act, shall commence at a convenient place in the city of Cleveland, in the County of Cuyahoga, and thence on the most direct, practicable and least expensive route to the Ohio river, at the most suitable point; and if the said railroad shall not be commenced in five years from the passage of this act, and if said railroad shall not be completed within twelve years from the commencement thereof, then this act shall be null and void; provided that said company may unite said railroad, by them constructed, at some point, southeasterly of the City of Cleveland, with any other railroad, authorized by law, which may be constructed on the easterly side of the Cuyahoga river, leading to Cleveland, and to make such arrangements as to the division of labor and earnings as the directors of the companies owning such united railroads may deem equitable.

486 SEC. 3. That it shall be lawful for said corporation to commence the construction of said railroad or way, and enjoy all the powers and privileges conferred by this act, and the act hereby revived, as soon as the sum of fifty thousand dollars shall be subscribed to said stock, and the payment thereof considered safe and secure.

SEC. 4. That in obtaining the right of way, and procuring materials for the construction and repair of said road or way, the said corporation shall, in all respects, be governed by the act entitled "an act to amend the act entitled an act for the regulation of turnpike companies," passed March eleventh, one thousand eight hundred and forty-three, and all claims for damages as aforesaid, shall be settled and adjusted according to the provisions of said act.

SEC. 5. The said company shall have power to demand and receive for the transportation of persons and property over said road, or any portion thereof, the following rates of fare and tolls; For each person not more than four cents per mile; and for each ton weight of property, not more than eight cents per mile, and in the same proportion for a greater or less distance or weight.

SEC. 6. That said company, by its proper officer, duly authorized by the directors, is hereby authorized and empowered to mortgage, hypothecate or pledge, all or any part of said railroad, or of any

other real or personal property belonging to said company, or of any portion of the tolls and revenues of said company which may thereafter accrue, for the purpose of raising money to construct said railroad or to pay debts incurred in the construction thereof.

SEC. 7. That so much of the act hereby revived and amended as is -consistent with the provisions of this act is hereby repealed.

JOHN M. GALLAGHER,

Speaker of the House of Representatives.

DAVID CHAMBERS,

Speaker of the Senate.

March 11, 1845.

And further to maintain the issues on their part the defendants The Cleveland & Pittsburgh Railroad Company, and the Pennsylvania Company, offered in evidence act found on page 146 of Ohio Local Laws, Volume 47. A true copy of the same is as follows, to-wit:

487 "An Act Authorizing the City of Cleveland to Subscribe to the Capital Stock of the Cleveland and Pittsburgh Railroad Company and for Other Purposes.

SEC. 1. Be it enacted by the General Assembly of the State of Ohio, That the City of Cleveland is hereby authorized to subscribe for shares in the capital stock of the Cleveland and Pittsburgh Railroad Company, or at the option of the commissioners hereinafter named, in the capital stock of any railroad company authorized to construct a road leading from Cleveland aforesaid in the direction of the city of Pittsburgh, in the State of Pennsylvania, not exceeding in the whole, one hundred thousand dollars; and the commissioners hereafter named or a majority of them, are hereby empowered to make such subscription in the name of the city of Cleveland, in such number of shares, from time to time, and under such restrictions and conditions as to them may seem expedient, and for the purpose of paying the installments thereon, they may issue bonds, scrip, or other contracts in proper form, in the name of, and binding said city, bearing interest, payable annually, either at Cleveland aforesaid, or in the City of New York, or Boston or of Philadelphia, as said commissioners may stipulate, the principal thereof to be payable at such time or times, not less than ten years after the date of such subscription, as may be thought most to the advantage of the city; and the shares of stock so subscribed, and the avails arising from the sales thereof, shall be held for the purpose of paying the principal of such bonds, scrip, or other contracts, and shall be subject to no other liability of the city whatsoever, so long as such bonds, scrip, or other contracts shall remain unpaid.

SEC. 2. The commissioners in person, or by an agent or proxy, appointed in writing by them, or a majority of them, are hereby authorized to attend all meetings of the stockholders of the railroad company, in which stock shall have been subscribed as aforesaid, and to vote on the shares which may at any time be held by said city, for

the choice of directors of said company, and on all questions which may be submitted to the votes of such stockholders; they are also authorized, in person or by their agent or agents, appointed as hereafter provided, to receive all dividends and profits which may accrue

on said stock, to appropriate the same to pay the interest
 488 which may accrue on the bonds, scrip or other evidence of indebtedness which may be issued by them in payment of said shares of stock; to apply any surplus of such dividends and profits in liquidation of such indebtedness, or any part thereof, or to invest the same to be so applied whenever opportunity may present, or to them may seem expedient; to exchange said shares or any part thereof, for the evidence of such indebtedness; to sell said shares, or any part thereof, at such time or times as to them may seem expedient; to appoint in writing, by them or a majority of them, one or more agents for the management of the business to them by this act intrusted and at pleasure to revoke such appointment and appoint others in their room, and to do whatsoever else may be necessary to secure and advance the interests of the city in the premises: Provided, however, that said commissioners shall not sell any of said shares at less than the par value thereof, unless they shall be expressly authorized to accept of a less price by the votes of not less than two-thirds of all the members of the council of said city, and after at least ten days' previous notice having been given in writing, to said city council, and also by publication in some newspaper published in said city, that such authority will be asked for by said commissioners at some particular meeting of said city council to be named in said notice.

SEC. 3. That said commissioners shall keep an accurate register of all bonds, scrip, and other evidences of indebtedness issued by them, showing the dates, numbers and amounts thereof the names of the persons to whom, and the times at which the same shall be made payable; a copy of which shall be deposited with the said city council within six months after the same shall have been issued, and all alterations thereof shall be notified to said city council within six months after such alteration shall have been made; they shall also, on or before the first Monday in June, of each year, make a statement in writing, to the auditor of Cuyahoga county, showing the amount of principal and interest which will be due and payable on such evidences of indebtedness within one year next thereafter, and any deficiency which may already exist, the amount expected to be received from dividends on the said shares of stock, or from the sale thereof, or any portion thereof, and the amount of tax which they may deem necessary or expedient to be levied, to pay such interest and such principal so falling due; and it shall be the duty of said
 auditor, on receiving such statement to assess upon the prop-
 erty in said city, and in any territory which hereafter may be
 489 added to said city, subject to taxation for State and county purposes, such percentage of tax as may be necessary and sufficient to raise the amount so stated to him, and the costs of collection thereof, and to enter the same in the proper sums, chargeable on the separate parcels of property subject to such tax on the duplicate list

of said county, in a separate column, to be collected by the treasurer of said county as other taxes assessed on the property in said city, subject to taxation for general purposes, are by law to be collected; and the taxes so assessed shall be a lien on the property chargeable therewith, as taxes for State and county purposes are or may, by law, be liens thereon; and the treasurer of said county shall proceed to collect said taxes at the same time that he collects the other taxes levied on the property in said city, and shall on or before the last Monday in January, in each year, settle with and pay over to the said commissioners, or the agent or agents appointed by them, as herein provided, the amount of said tax which may by him have been collected; and in case of delinquency or default of payment of any of the taxes so assessed, the same proceedings shall take place in regard to the collection thereof, or the sale of the lands so delinquent, as by law are or may be required in case of non-payment of State and county taxes.

SEC. 4. That Moses Kelley, Elisha T. Stirling, Philo Scovill, Henry W. Clark and Harvey Rice, and their successors, are hereby constituted commissioners under this act; and in case of vacancy, by reason of death, resignation, removal from the county of Cuyahoga, or any other cause, (except removal from office by the Supreme Court, as herein provided), the remaining commissioners, or a majority of them, shall appoint a suitable person or persons to fill such vacancy, and shall give to him or them a certificate, in writing, of such appointment, and he or they shall thereupon be invested with the same powers, and be subject to the same duties, and shall give the same bonds as herein provided, as if originally appointed by this act; the said commissioners shall have power to adopt proper by-laws for the regulation of their proceedings under this act, and to appoint a suitable person to act as their secretary, who shall keep proper books, in which shall be recorded, in an intelligible manner, all the proceedings of said board in relation to the matters by this
490 act intrusted to them, and accurate accounts of all moneys received and payments made by said commissioners, and accurate lists of all bonds, scrip, or other evidences of indebtedness issued by them, by authority of this act, and they shall make to the city council of the city of Cleveland, once in every six months, a statement of their doing- since the last preceding settlement, and their books and records shall at all times be subject to the inspection of the said city council, or of any committee of said city council appointed for that purpose; the said commissioners and their successors shall, each for himself, severally execute good and sufficient bonds, with one or more securities, payable to the City of Cleveland, in the penal sum of five thousand dollars, conditioned that he shall faithfully account for any moneys which by the authority of this act, may come into the hands of the obligor in such bond; and the said commissioners may, on their part, require from their different agents, such bonds, payable to said city, conditioned for the faithful performance of the duties imposed on such agent or agents, as such commissioners shall deem expedient and safe; and in all acts

of said commissioners, the decision or act of a majority of those then in office, shall govern.

SEC. 5. The Supreme Court in and for the county of Cuyahoga, shall have power at any time, on the application of the city council, and good cause shown by affidavit, of malfeasance, misconduct, or neglect of duty on the part of any of the commissioners, to issue a citation to him or them, requiring him or them to appear before said court, at such time and place as said court may direct, to answer such charges as may be preferred against him or them, and on investigation of such charges, and finding the same to be true and well sustained, and sufficient cause for the removal of such commissioner or commissioners, the said court may remove any of such Commissioners, whom the court shall find guilty of such malfeasance, misconduct, or neglect, and the court shall have power to fill the vacancy so created, by appointing other commissioners in place of those so removed; and the commissioner or commissioners so appointed shall be vested with the same powers, and be liable to the same duties and obligations as the commissioners named in this act.

SEC. 6. The city council of the city of Cleveland shall, from time to time, pay to said commissioners their reasonable expenses, 491 incurred in discharge of the business, by this act intrusted to them, and also such compensation for their time actually employed therein, while absent from the city in discharge of their duties, as may be reasonable.

SEC. 7. The said Cleveland and Pittsburgh Railroad Company is hereby authorized to construct branches from the main line of said road to any village or place within the limits of any county through which said road may pass.

SEC. 8. That the president and directors of said company, or a majority of them, or any person authorized by them, or a majority of them, may agree with the owner or owners of any land, earth, timber, gravel or stone, or other materials, or any implements which may be wanted for the construction or repair of said road or any of their works, for the purchase, or use or occupation of the same, and if they cannot agree, or if the owner or owners, or any of them, be a married woman, infant, insane person, or idiot, or out of the county in which the property wanted may lie when such land and materials shall be wanted, application may be made to the Court of Common Pleas or other court of Record of the county where the land lies, or any Judge thereof in vacation, by either party, and said Court or Judge shall appoint by warrant, three disinterested free holders of such county to appraise the damages which the owner of the land may sustain by such appropriation; such appraisers shall be duly sworn, they shall consider the benefit as well as the injury which such owner shall sustain by reason of said railroad, and shall forthwith return their assessment of damages to the Clerk of said Court, setting forth the value of the property taken or damage done to the property, the amount of benefit conferred and the difference between the value of or damage done to the property taken which they assessed to such owner or owners separately, to be by him filed and recorded, and thereupon said railroad company shall pay to said Clerk

the amount thus assessed, or secure the payment to the satisfaction of said Court or Judge issuing the warrant, and on making payment or tender thereof to said Clerk, or on giving such security as may be required, it shall be lawful for said company to hold their interests in such lands or materials thus appropriated and the privilege of using any material on said roadway, within the fifty feet on each side of the center of such roadway, for the uses aforesaid, the costs of such award to be paid by said company, and, on motion, by any party interested.

JOHN G. BRESLIN,
Speaker House Reps.
BREWSTER RANDALL,
Speaker of the Senate.

Feb. 16, 1849.

And further to maintain the issues on their part, the defendants The Cleveland & Pittsburgh Railroad Company and the Pennsylvania Company, offered in evidence Act found in Vol. 48, Ohio Local Laws, page 248. (To which the plaintiff objected as irrelevant.)

The COURT: That is what act?

Mr. BOYLE: The act of February 21, 1850.

Mr. LAWRENCE: I think it is for the construction of a branch to Akron and beyond.

Mr. BOYLE: It is to show that it is a trunk line now and runs to Pittsburgh.

The COURT: Is that road involved in this suit?

Mr. FOOTE: It is part of the same railroad.

Judge SANDERS: We are not parties to that contract. It shows the construction of these same terminals here.

Mr. BOYLE: It shows the necessity for terminals.

Mr. BAKER: I hardly think it would be competent to show that you were building a railroad from St. Louis to San Francisco.

Mr. LAWRENCE: This was to build from Hudson through Cuyahoga Falls and Akron.

Mr. BOYLE: Oh, no, this was authorizing it to extend into Pittsburgh.

Mr. BAKER: It is entitled "An Act to authorize the Cleveland & Pittsburgh Railroad Company to increase their capital stock and for other purposes."

493 The COURT: That is one of the roads that terminates here on this made land?

Judge SANDERS: Yes, and shows the completion of the line originally contemplated from Pittsburgh to Cleveland.

(The objection was overruled by the court; to which ruling of the court the plaintiff then and there excepted.)

A true copy of said Act is as follows, to-wit:

"An Act to Authorize the Cleveland and Pittsburgh Railroad Company to Increase Their Capital Stock, and for Other Purposes.

SEC. 1. Be it Enacted by the General Assembly of the State of Ohio, That the Cleveland and Pittsburgh Railroad Company be, and is hereby authorized and empowered to increase its capital stock for the construction and equipment of its main line of road and branches, to an amount not exceeding in the aggregate three millions of dollars, at such times and in such manner and portions as the president and directors of said company shall direct.

SEC. 2. That the eighth section of the act entitled "an act to authorize the city of Cleveland to subscribe to the capital stock of the Cleveland and Pittsburgh Railroad Company, and for other purposes," be, and the same is hereby repealed. And all privileges and benefits conferred by the ninth section of the act entitled "an act regulating railroad companies," passed February 11, 1848, and hereby extended to and conferred upon said Cleveland and Pittsburgh Railroad Company, and all applications for damages, and the assessment of the same, shall hereafter be made, assessed and ascertained under the provisions of the said ninth section of the act regulating railroad companies, aforesaid; provided, that said company shall be subject to the provisions of any general law which may hereafter be passed, regulating the mode of assessing damages for materials taken or for the right of way.

SEC. 3. Said company shall have power to sell or negotiate the notes or bonds of the company, issued by such company at such times and at such places, either within or without this State, and at such rate and for such prices as may be deemed best fitted to advance the interests of the company; and if such bonds or
494 notes are thus sold at a discount, such sale shall be as valid in every respect as if they were sold at their par value.

SEC. 4. Said company is further authorized to extend its road, under power obtained from the State of Pennsylvania, to the City of Pittsburgh, in said State, or to any point in the direction of Pittsburgh, at which its road may be connected with any other road leading from said city, and to increase its capital to the amount necessary for the construction and equipment of such extension; provided, that the aggregate amount of the capital stock of said company shall not exceed four millions of dollars.

SEC. 5. That the annual meeting of the stockholders of said company, for the election of president and directors of said company, shall hereafter be held on the first Wednesday of January of each year.

BENJAMIN F. LEITER,

Speaker of the House of Representatives.

CHARLES C. CONVERS,

Speaker of the Senate.

Feb. 21, 1850.

And further to maintain the issues on their part the defendants The Cleveland & Pittsburgh Railroad Company and the Pennsylvania Company, offered in evidence Act found on page 468, Vol.

49 Ohio Local Laws. (To which the plaintiff objected; which objection was overruled by the court; to which ruling of the court the plaintiff then and there excepted.)

A true copy of said Act is as follows, to-wit:

"An Act to Amend an Act Entitled 'An Act to Incorporate the Cleveland and Pittsburgh Railroad Company,' Passed March 14, 1836.

SEC. 1. Be it Enacted by the General Assembly of the State of Ohio, That the Cleveland and Pittsburgh Railroad Company be, and they are hereby authorized to construct, under the provisions of their charter, and in the manner hereinafter indicated, a branch railroad from some convenient point on the Cleveland and Pittsburgh Railroad, in Hudson, Summit County, through Cuyahoga Falls and Akron, to Wooster or some other point in the Ohio and Pennsylvania Railroad, between Massillon and Wooster, and to connect with said Ohio and Pennsylvania Railroad and any other railroad running in the direction of Columbus, and for this
495 purpose may increase their capital stock one million of dollars.

SEC. 2. That, for the purpose of constructing and managing said Akron branch road, such persons as may have subscribed for the stock thereof or for the major part of said stock, may organize by the election of not more than seven directors, who shall elect a President from their numbers; and, under the name of the "Akron Branch of the Cleveland and Pittsburgh Railroad Company," be entitled to all the privileges and subject to all the restrictions and liabilities granted or imposed by the charter of the Cleveland and Pittsburgh Railroad Company and the amendments thereto; and the Cleveland and Pittsburgh Railroad Company may subscribe stock to said Akron Branch Road, and may aid the said Akron Branch organization, by the sale or guaranty of its bonds or otherwise, as they may deem proper; and the Directors of the said Akron Branch may make such arrangements with the said Cleveland and Pittsburgh Railroad Company, in regard to the use of their road, or with any other company in regard to the use of any other railroad intersected by said Akron branch as may be found expedient: Provided, however, that the Directors of the Cleveland and Pittsburgh Railroad company; and the stockholders of the said Akron branch may, if they choose so to do, merge the stock of said branch road into the stock of the said Cleveland and Pittsburgh Railroad Company, as a joint and common stock, and have said Akron branch road constructed, managed and controlled by the said Cleveland and Pittsburgh Railroad Company.

SEC. 3. The said Cleveland and Pittsburgh Railroad Company is also hereby authorized to organize, construct and extend a branch of their road, in the same manner as hereinbefore prescribed, to connect with the Ohio Central Railroad.

SEC. 4. For the purpose of acting upon the amendments of the charter of the Cleveland and Pittsburgh Railroad Company, con-

templated in this act, and for the organization of said Akron Branch, the President of said Cleveland and Pittsburgh Railroad Company may call a meeting of its stockholders at Ravenna, and also a meeting of the subscribers to said Akron branch, at Akron, by giving fifteen days' public notice of the time and place of each of said meetings.

SEC. 5. That applications for damages, and assessments therefor, in all cases of lands taken and appropriated by said company, for purposes of their railroads, prior to the repeal of the eighth section of the act to authorize the City of Cleveland, to subscribe to
496 the capital stock of the Cleveland and Pittsburgh Railroad company, and for other purposes, passed February, 1849, shall be governed by the provisions of said eighth section, which is hereby revived and declared, to be in full force in such cases only.

JOHN F. MORSE,

Speaker of the House of Representatives.

CHARLES C. CONVERS,

Speaker of the Senate.

February 19, 1851.

And further to maintain the issues on their part, the defendants offered to read from the records of the Board of Directors of the Cleveland and Pittsburgh Railroad Company, as appears in their record of July 26, 1848.

Judge SANDERS: Your Honor will remember that the contract of 1849 says that it is subject to the rights of the Cleveland & Pittsburgh Road. We were somewhat at a loss in the former trial of this case, after this lapse of time, to find when it was that the Cleveland & Pittsburgh Road claimed any interest in that property; I mean in the sense of taking possession of the property. It was evident that it was not prior to 1849, by reason of the recitation in that contract; but Mr. Brooks has looked it up since and found some things which throw some light on that question; among them there is this, which shows the location of this road on this property:

"JULY 26, 1848.

"Resolved, That the route at present located from Hudson to the point of termination at the pier in the city of Cleveland, agreeably to the report of the engineer, be and is hereby adopted, provided that the privilege is reserved of making such alterations as may hereafter be deemed necessary or expedient."

And further to maintain the issues on their part, the defendants also offered in evidence, from the Annual Reports to 1860 inclusive, of the C. & P. R. Co., Vol. 1: Part of Annual Report of George R. Eichbaum, under date of December 9, 1848, as follows:

"I have the honor to report as follows upon the location, estimates, etc. of the Cleveland & Pittsburgh Railroad. At the date of my last report in 1847, a portion of the line from Wellsville northwestwardly, embracing a distance of 18 miles and 2,960 feet had been located and placed under contract. Since the date of

that report the remainder of the line, through to Cleveland, has been located and 31 miles and 4,720 feet have been placed under contract, extending from a point near Teagarden's $1\frac{1}{2}$ miles
497 east to the village of Mt. Union, in Stark County through Ravenna to Hudson, making, with the line previously let, 50 miles and 2,400 feet at present under contract; the whole distance from Wellsville to the upper passenger station at Cleveland being by the line of railroad as located 98 miles and 960 feet."

Also from the same report the following:

"The Valley of this branch of Mill Creek is descended to the main Mill Creek near Mr. Marks', and thence the valley of Mill Creek is followed to Newburgh, where Mill Creek bends suddenly to the westward and descends rapidly to the Cuyahoga; and the line of railroad after passing through Newburgh, bears away to the northward, descending at the rate of 39.6 feet per mile along the face of the slope and ground which extends down to the level plain upon which Cleveland is situated. The grade strikes the surface of the plain near the crossing of Kingsbury's Run, west of the late Judge Kingsbury's residence. Thence the line is continued over an even sandy plain, crossing another branch of Kingsbury's run on the Otis farm and is continued to the bank of Lake Erie near Mr. Maltby's at the east side of the city of Cleveland. The line then descends westerly along the bank of the lake in front of Cleveland at a grade of 39.6 feet per mile to a point on the lake shore, and thence runs level to within 125 feet of the pier at the mouth of the Cuyahoga River and is extended parallel with the pier affording space for the deposit and shipment of coal and other freight."

Judge SANDERS: So there is the location approved in July 26, 1848, and reported in December, 1848, located as I have stated.

Mr. BAKER: But it does not say that the northern division had been built, but simply shows the location by the surveyors.

Judge SANDERS: Yes. My point about that is that under the statute, as I expect to show it to Your Honor, it located and did give the Cleveland & Pittsburgh Company the right to proceed and perfect its title by appropriation.

The COURT: And this report of your engineer simply shows that the resolution was carried into effect.

Judge SANDERS: Yes, Your Honor.

And further to maintain the issues on their part, the defendants offered in evidence Deed from the Connecticut Land
498 Company to Thomas Lloyd, recorded in the records of Cuyahoga County, Volume 27, page 204.

To which the plaintiff objected—first, on the ground that the deed does not purport to convey any land included within the limits of Bath street. Second, that there is no offer to prove that the grantors in that deed had any title or right to convey any part of the land included in Bath street.

The COURT: After all, no quit-claim deed really purports to convey anything, and yet, as a matter of fact, if it had anything to convey, it would convey it.

Judge SANDERS: And the theory that we propose to make is that

we have records of the conveyance of the property, that we went into possession under this record title, and that that possession under that record title has continued for more than twenty-one years. It cannot be material whether the original title was good or bad, if it has become good by possession.

The COURT: Of course, that is one of the questions here; if the grantor to Lloyd had no title, Lloyd could get no title, Lloyd could convey no title.

Judge SANDERS: But if, in 1850, we went in under a deed from Mr. Lloyd, purporting to convey his title, whether or not it conveyed any title, our possession for twenty-one years under that deed would make a perfect title and the deed would describe the boundaries of our possession.

The objection was overruled by the court; to which ruling of the court the plaintiff then and there excepted.

A true copy of said deed is as follows, to-wit:

"Trustees Conn't Land Co. to Thomas Lloyd.

"To all people to whom these presents shall come, Greeting:

Know ye that whereas upon the application of Thomas Lloyd of Hartford, in the State of Connecticut, representing to us the subscribers, Trustees of the late Connecticut Land Company, that there remains a small piece or parcel of vacant land lying on the waters of Lake Erie in the town of Cleveland and State of Ohio bounding northerly on said Lake, westerly on the west line of said town as first laid out southerly on lands heretofore conveyed by us as trustees aforesaid to sundry individuals, original proprietors and easterly thirteen rods east of the east line on Bank street in the City of Cleveland. Now, therefore, upon said application and

499 representation, and at the sole risk of the said Thomas Lloyd and without any covenant of seizen or warranty from us respecting the title or quantity of said piece or parcel of land, and for the consideration of nine hundred dollars, We do hereby in our said capacity as Trustees of said Company release and quit-claim to him the said Thomas Lloyd and to his heirs forever all the right, title and interest which we as Trustees aforesaid have to said piece or parcel of land, or any part thereof, if any there be not before conveyed by us lying and being within the bounds as above described, expressly reserving to all persons any legal right or title which they may have to the same.

In witness whereof we have hereunto set our hands and seals the 23rd day of March Anno Domini 1836.

JONATHAN BRACE. [SEAL.]
JOHN CALDWELL. [SEAL.]
JNO. MORGAN. [SEAL.]

Signed sealed and delivered in presence of

FRANCIS A. BUNCE.
SETH TERRY.

March 23d, A. D. 1836.

STATE OF CONNECTICUT,
Hartford County, ss:

Personally appeared Jonathan Brace, John Caldwell and John Morgan, Esqur. signers and sealers of the foregoing instrument and acknowledged the same to — their free act and deed before one

SETH TERRY,
Justice of the Peace."

Received August 13th, 1839.

Recorded August 14, 1839.

And further to maintain the issues on their part the defendants, The Cleveland & Pittsburgh Railroad Company, and the Pennsylvania Company, offered in evidence records of the Probate Court of Cuyahoga County, in respect to the Administration of the Estate of Thomas Lloyd. A true copy thereof is as follows, to-wit:

No. 796.

In re Estate of THOMAS LLOYD.

Special Term, 1842.

May 30th, 1842. Special Court—Ellery G. Williams and Albert M. Lloyd appointed Administrators, F. T. Backus and James K. Hitchcock bail for Williams in \$200, and Edmund Clark and Sam'l Starkweather bail for Lloyd in \$200. Moses Kelly, Samuel
 500 Williamson and James B. Finney, Appraisers. Bond of E. G. Williams filed May 30th, 1842. Lloyd's bond filed July 13th, 1842, and Letters issued.

July term, 1842. S. Starkweather substituted as bail in place of J. G. McCurdy.

Aug. 29, 1842. Inventory filed.

Feby. term, 1844. Additional time one year granted.

May term, 1844. Administrators ordered to give additional bail in \$5,000.00. F. T. Backus and E. Clark bail for E. G. Williams.

Oct. 23rd, 1844. Bond filed.

Feby. term, 1845. Further time one year granted to settle said estate.

Nov. 25, 1858. Citation issued to Administrators to file account.

THE STATE OF OHIO,
Cuyahoga County, ss:

In the Probate Court.

I, Henry C. White, Judge of the Probate Court, within and for said County, in the State aforesaid do hereby certify that the above and foregoing is a full and true copy from the original Docket Entries In re Estate of Thomas Lloyd, deceased, now on file and of record in said Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Probate Court, at Cleveland, in said County, this 28th day of December, A. D. 1898.

[SEAL.]

HENRY C. WHITE,

Probate Judge,

By A. C. SHERMAN,

Deputy Clerk.

Rev. Stamp, 10c.

I, ———, Presiding Judge of the Court of Common Pleas, within and for the Fourth Judicial District of the State of Ohio, in which District is said County of Cuyahoga, do hereby certify, that Henry C. White was at the date of the above certificate, and now is, Judge and Ex Officio Clerk of said Court of Probate, within and for said Cuyahoga County, and State of Ohio, and that he is the officer in whose custody said original record — is required to be kept by the laws of the State of Ohio, and authorized by the laws of the State of Ohio, to certify as aforesaid, and that said attestation to said copy of said record is in due form of law.

Signed by me, and dated at Cleveland, Cuyahoga County, Ohio, this — day of Jan'y 9th A. D. 1899.

WALTER C. ONG,

Judge as Aforesaid.

(Endorsed.)

501 Doc. A. No. 796. Probate Court County of Cuyahoga State of Ohio. In the Matter of Estate of Thomas Lloyd.

And further to maintain the issues on their part, the defendants also offered in evidence certified copy of the proceedings in the Probate Court in the Matter of the Estate of Thomas Lloyd, with respect to the sale of land, appearing in the records of the Court of Common Pleas Vol. 49, page 425, a true copy of which is as follows, to wit:

November Term, 1846.

THE STATE OF OHIO,
Cuyahoga County, ss:

No. 7. 490.

ELLERY G. WILLIAMS & ALBERT M. LLOYD, Admsrs. of Thomas
Lloyd, Deceased,

VS.

WILLIAM B. LLOYD, JANE E. MARY, CAROLINE, ROSELLA, ANN,
MARGARET, SARAH, and THOMAS L. HAYDEN, HEZEKIAH CAMP
and Others.

Vol. 49—425.

Motion to Sell Land.

Petition.

Be it remembered that heretofore to wit on the first day of October in the year of our Lord one thousand eight hundred and forty five, the said petitioners by their solicitors filed in the office of the Clerk of the Court of Common Pleas of said Cuyahoga County, Ohio, the following petition to sell land, against said defendants, to wit: To the Court of Common Pleas of the County of Cuyahoga and State of Ohio. Your petitioners Albert M. Lloyd and Ellery G. Williams administrators on the estate of Thomas Lloyd deceased respectfully represent, that the total value of the personal estate and effects of said decedent, is as near as can be ascertained three thousand dollars. That the amount of debts owing by the deceased, as nearly as they can now be ascertained amounts to sixty five thousand dollars and the amount of the charges of administration to fifteen hundred dollars or thereabouts; and that the personal estate and effects are insufficient to pay said debt. The said decedent died seized in fee simple of the following real estate in the City of Cleveland, County of Cuyahoga and State of Ohio and bounded as follows: North by Lake Erie, West by the present channel of the Cuyahoga River, south by lands previous to the 23rd day of March 1836 convey by the Trustees of the Connecticut Land Company to divers individuals and Easterly by a line parallel with Bank Street and thirteen rods West of the West line thereof. The said decedent died leaving the following heirs having the next estate of inheritance in the premises above described from the said decedent to wit: John Henry Lloyd, William B. Lloyd, Albert M. Lloyd, Delia Ann Lloyd, Caroline, Rosella & Abigail P. Lloyd, Jane E. Mary, Caroline, Rosella, Ann, Margaret, Sarah & Thomas L. Hayden. The said John Henry, Delia Ann, Carolin Rosella & Abigail P. do not reside in the State of Ohio and the said Margaret Sarah & Thomas L. are minors. Your Petitioners further represent that William B. Lloyd and Hezekiah Camp claim an

equitable interest in said premises. Your petitioners therefore pray that the persons above named be made parties defendant to this petition their rights adjusted and that your petitioners may be ordered to sell real estate on a credit of one, two, three, four and five years. And for such other relief as equity requires.

ALBERT M. LLOYD,
 ELLERY G. WILLIAMS,
Administrator of T. Lloyd.
 By WHITE AND WILLIAMS,
Their Att'ys.

THE STATE OF OHIO,
Cuyahoga County, ss:

Ellery G. Williams one of the administrators of the estate of Thomas Lloyd deceased, petitioner named in the within petition do make solemn oath that John Henry Lloyd, Delia Ann Lloyd, Caroline, Rosella, Abigail P. Lloyd, in the within named petition mentioned resides out of this State as I verily believe.

ELLERY G. WILLIAMS.

Sworn to and Subscribed this 1st day of October A. D. 1845 before me.

A. CLARK,
Deputy Clerk.

And thereupon was duly issued the following writ of Subpœna in this case to wit:

Subpœna.

THE STATE OF OHIO,
Cuyahoga County, ss:

[SEAL.]

To the Sheriff of our said County, Greeting:

We command you that you summon Wm. B. Lloyd, Jane E. Hayden, Mary Haden, Caroline Hayden, Rosella Hayden, Ann Hayden, (Margaret Heyden, Sarah Heyden, Thomas Lloyd Heyden minors) Hezekiah Camp to appear before the judges of our Court of Common Pleas, at the Court House, on the 4th day of November next ensuing to answer a petition in Chancery, exhibited against them by Ellery G. Williams & Albert G. Lloyd administrators on the estate of Thomas Lloyd deceased and this they shall in no wise omit under the penalty of one thousand dollars and have then and there this writ. Witness Frederick Whittlesey, Clerk of our said Court at the Court House this 1st day of October Anno Domini one thousand eight hundred and forty five.

F. WHITTLESEY, *Clerk,*
 By A. CLARK, *Deputy.*

Returned.

And afterwards to wit: at the next term of said Court of Common Pleas begun and held at the Court House in the City of Cleveland within and for said Cuyahoga County on the fourth day of November in the year of our Lord one thousand eight hundred and forty five by and before their Honors: Benjamin Bissel, President Judge Ather M. Coe, Joseph Haywood and Thomas M. Kelley Associate Judges of said Court came the sheriff of said County and returned said writ with his endorsements thereon as follows, to wit, State of Ohio, Cuyahoga County ss Cleveland. October 18th 1845 I served this writ on Jane E. Hayden, Caroline Heyden, Rosella Heyden, Margaret Heyden, Sarah Heyden, Thomas Lloyd Heyden, by leaving a true copy of the within at their place of residence. Also on Mary Heyden by delivering to her a true copy. Also on Hezekiah Camp Oct. 16th '45 by delivering to him a true copy. H. Beebe Sheriff by E. B. Westick Deputy. Served Oct. 20th 1845 on William B. Lloyd by leaving a true copy of this writ at his place of residence. H. Beebe, Sheriff.

Cont'd.

And thereupon this case was continued.

Guard. App't'd.

And afterwards to wit at the next term of said Court begun and held at the Court House in Cleveland within and for said Cuyahoga County, on the eighteenth day of February eighteen hundred and forty six on motion the Court appoint Moses Kelley, Esq. Guardian ad litem to the minor defendants Margaret Heyden, Sarah Heyden and Thomas Lloyd Heyden and thereupon said Guardian appears in Court and accepts said appointment. And at this term this cause came on to be heard upon the petition and answer of William B. Lloyd & Hezekiah Camp and it appearing to the Court that due notice of the pendency of said petition had been published and the other defendants still failing to plead,

Appraisers App't'd. answer or demur to said petition, It is ordered that the facts therein contained be taken as confessed against them. It further appearing to the Court that said Hezekiah Camp is equitably entitled to one undivided fourth part of the premises described in said petition and the said William B.

504 Lloyd to one undivided third part of the same of motion Charles L. Camp, Edmund Clark and John Barr are appointed appraisers to appraise the remaining portion of said premises, being forty one hundredths and one third of a hundredth part in common and undivided and there being no dower interest in the premises it is order- and decreed that upon the return and report of said appraisers, said administrators shall proceed to

Cont'd. sell the same according to law and the prayer of said petition and make their report at the next term to which time this cause is continued.

And afterwards to-wit at the next term of said court began and held at the Court House in Cleveland within and for said Cuyahoga County on the twelfth day of May eighteen hundred and forty-six, was issued the following Order of Appraisal, to-wit:

THE STATE OF OHIO,
Cuyahoga County, ss: [SEAL.]

Order of Appraisal & Sale.

To Albert M. Lloyd and Ellery G. Williams, Administrators on the Estate of Thomas Lloyd, Deceased, Greeting:

We command you that without delay by the oaths of Charles L. Camp, Edmund Clark and John Barr, three judicious and disinterested men of said County you cause forty-one 100 and one-third of an hundredth of the following real estate to be appraised at its real value in money and that you sell the same under the law authorizing the sale of real estate and the said real estate is described as follows to-wit: Situated in the City of Cleveland, County of Cuyahoga and State of Ohio and bounded as follows—North by Lake Erie, West by the present channel of the Cuyahoga River, South by lands previous to the 23rd day of March, 1836 conveyed by the trustees of the Connecticut Land Company to divers individuals and Easterly by a line parallel with Bank Street and thirteen rods west of the west line thereof. You are therefore commanded to appraise and sell the said property as aforesaid and to make return of your proceedings hereof to our said court on or before the first day of the next term and bring this order with you. Witness Frederick Whittlesey Clerk of our said Court of Common Pleas at the City of Cleveland this 23rd day of May A. D. 1846.

F. WHITTLESEY, Clerk,
By A. CLARK, Dep.

And thereupon this cause was continued.

And afterwards to-wit at the next term of said Court, begun and held at the Court House in the City of Cleveland within and for said Cuyahoga County on the third day of November in the year of our Lord one thousand eight hundred and forty-five, by 505 and before their Honor Benjamin Bissel President Judge, Asher M. Coe, Joseph Hayward and Thomas Kelley, Associate Judges of said court come the administrators on the estate of Thomas Lloyd deceased and make reports of their proceedings and sale by them made under an order of sale issued on said cause. Which said report is as follows, to-wit:

THE STATE OF OHIO,
Cuyahoga County, ss:

On the first day of June 1846 before me personally appeared John Barr, C. L. Camp and Edmund Clark within named and made

solemn oath that they would upon actual view honestly and un-
 partially appraise the real estate of Thomas Lloyd deceased in pur-
 suance of the order of the Court of Common Pleas of Cuyahoga
 County in the case of Albert M. Lloyd and Ellery G. Williams
 administrators of said Thomas Lloyd against William B. Lloyd
 and others.

E. HESSENMUELLER,
Justice of the Peace of said County.

June 1st 1846.

Rec'd my fees of E. G. Williams.

Cuyahoga County Common Pleas.

ALBERT M. LLOYD & ELLERY G. WILLIAMS, as Administrators of
 Thomas Lloyd, Dec'd,

vs.

WILLIAM B. LLOYD et al.

Petition to Sell Land.

In obedience to the order of the Court in the above case after
 being first duly sworn and upon actual view of the premises in
 said Petition described, we the undersigned appraisers do estimate
 the real estate described in said Petition at fifteen hundred and
 fifty dollars.

C. S. CAMP,
 EDM. CLARK,
 JOHN BARR,
Appraisers.

Fees one dollar each, paid by E. G. Williams, Adm.

Nov. Term, 1846.

THE STATE OF OHIO,
Cuyahoga County, ss:

In obedience to the command of the above writ, we, after having
 advertised the sale of the premises described in the above order ac-
 cording to law, to be made at the door of the Court House in the
 City of Cleveland, County and State aforesaid, on the 9th day of
 July 1846 at 2 o'clock P. M. proceeded to sell the same at the *term*
 and place above mentioned at Public vendue and William B. Lloyd,
 by his Agent Charles Terry having bid the sum of ten hundred
 and thirty six dollars for the premises above described and that
 being the highest and best bid and more than two-thirds of the ap-
 praised value the same was struck off and sold to the said William
 B. Lloyd for the said sum of ten hundred and thirty six dollars pay-
 able as follows, one sixth in hand and the balance in five equal
 annual payments with interest, which said sale we pray may be
 confirmed and a deed ordered, and also that the expenses on the

petition and attending said sale, the bill of which is hereto attached may be allowed and paid out of the proceeds of said sale. White & Williams Att'ys drafting R. P. \$10.00 J. S. Harris advertising \$2.50 J. P. swearing Apprs. \$0.25 Appraisers Fees \$3.00. White & Williams Att'ys for service \$5.00 J. S. Harris advertising sale \$662½ Adm'rs' fees 2 per cent \$20.72 White & Williams Attorneys drafting Deed and mortgage and Recording \$2.63 Clerk's & Sheriff's fees \$13.90.

ALBERT M. LLOYD,
ELLERY G. WILLIAMS,
Adm'rs of Thomas Lloyd.

Judgment.

And the Court having examined said proceedings and sale and being satisfied that they have in all respects been legal, do approve and confirm said sale & order said Administrator- to make to the purchaser or purchasers good and sufficient deeds of the premises so sold as aforesaid & that the petitioners pay the costs herein taxed at fourteen dollars and eighty three cents (\$14.83).

THE STATE OF OHIO,
Cuyahoga County, ss:

I, Harry L. Vail, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing copy is taken and copied from the records Vol. 49 page 425 of the proceedings of the Court of Common Pleas, within and for said Cuyahoga County, and that said foregoing copy has been compared by me, with the original records, Vol. 49, page 425 and that the same is a correct transcript thereof.

In testimony whereof, I do hereto subscribe my name officially, and affix the Seal of said Court at the Court House in the City of Cleveland, in said County, this 31st day of December, A. D. 1898.

[SEAL.]

HARRY L. VAIL, *Clerk.*

(Rev. Stamp 10c.)

I, Walter C. Ong, Presiding Judge of the Court of Common Pleas, within and for the Fourth Judicial District of the State of Ohio, in which District is said County of Cuyahoga, do hereby certify, that Harry L. Vail was at the date of the above certificate, and now is, Clerk of said Court of Common Pleas, within and for said Cuyahoga County, and State of Ohio, and that the said Clerk is the officer in whose custody said original record Vol. 49 page 425 is required to be kept by the laws of the State of Ohio, and authorized by the laws of the State of Ohio to certify as aforesaid, and that said attestation to said copy of said record is in due form of law.

507 Signed by me, and dated at Cleveland, Cuyahoga County,
Ohio, this 31st day of December, A. D. 1898.

WALTER C. ONG,
Judge as Aforesaid.

(Rev. Stamp 10c.)

THE STATE OF OHIO,
Cuyahoga County, ss:

I, Harry L. Vail, Clerk of the Court of Common Pleas, a Court of Record of Cuyahoga County, aforesaid, do hereby certify that Walter C. Ong by whom the annexed certificate was made was, at the date thereof, a Presiding Judge of the Common Pleas Court in and for said County, duly authorized by the laws of Ohio to make the same, and I am well acquainted with his handwriting, and believe his signature thereto is genuine.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court, at Cleveland, this 31st day of December, A. D. 1898.

[SEAL.]

HARRY L. VAIL, *Clerk.*

No. 12.

(Rev. Stamp 10c.)

(Endorsed:) Cuyahoga Common Pleas. Williams et al. vs. Lloyd et al. Copy of Rec'd.

Also certified copy of the deed made in pursuance of the foregoing proceedings from the Administrators of Thomas Lloyd, to William Lloyd, Vol. 45, page 597, Cuyahoga County Records, a true copy of which is as follows, to-wit:

Know ye, that we Albert M. Lloyd and Ellery G. Williams as the administrators of the estate of Thomas Lloyd late of Hartford in the State of Connecticut, deceased, who died intestate by virtue of any order and decree of the Court of Common Pleas in and for the County of Cuyahoga, State of Ohio, made at the November term of said Court in the year of our Lord one thousand eight hundred and forty five duly authorizing us by virtue of the proceedings then and theretofore had by and in said Court to sell the real estate of the said Thomas Lloyd deceased, hereinafter described and in pursuance of a sale duly made and reported to and confirmed by said

508 Court at the November term in the year of our Lord one thousand eight hundred and forty six and in consideration of the sum of ten hundred and thirty six dollars to us paid or secured to be paid by William B. Lloyd the purchaser at said sale of the real estate hereinafter described the receipt whereof we do hereby acknowledge, do hereby grant bargain and sell and convey unto the said William B. Lloyd his heirs and assigns forever by virtue and in pursuance of the orders decrees sale confirmation and powers above referred to a certain piece of land situate in the City of Cleveland, County of Cuyahoga and State of Ohio and de-

scribed as follows north by the Lake Erie westerly by the Cuyahoga River southerly by lands heretofore conveyed by the trustees of the Connecticut Land Company to wit: prior to the year 1836 and easterly by a line drawn parallel with the west line of Bank Street and thirteen rods westerly therefrom. To have and to hold the said tract or parcel of land with the privileges and appurtenances thereof to him the said William B. Lloyd & his heirs and assigns forever. In witness whereof we as administrators have hereunto set our hands and seals the first day of April in the year of our Lord one thousand eight hundred and fifty.

ALBERT M. LLOYD, [SEAL.]
 ELLERY G. WILLIAMS, [SEAL.]
As Administrators of Thomas Lloyd.

Signed, sealed and delivered in presence of—

JAS. C. CARY.
 JOHN BARR.

THE STATE OF OHIO,
Cuyahoga County, ss:

CLEVELAND, April 11th, 1850.

Personally appeared before me Albert M. Lloyd and Ellery G. Williams to me well known who acknowledged that they did sign and seal the within deed and that the same is their free act and deed.

Before me

JOHN BARR,
Justice of the Peace.

The within deed was delivered to Wm. B. Lloyd on the 17th day of April A. D. 1850.

WILLIAM B. LLOYD,

Witness.

S. WILLIAMSON,

By his agent,

A. N. LLOYD.

Rec'd 18th & Recorded 20th April, 1850.

JOHN PACKARD,
Dep. Recorder.

509 THE STATE OF OHIO,
Cuyahoga County, ss:

I, Fred Saal, County Recorder of the County of Cuyahoga aforesaid, in whose custody the land records of said county are required by the laws of the State of Ohio, to be kept, do hereby certify that the foregoing copy is taken and copied from the records of said county, as appears on page 597 in Vol. 45 of Deeds, and that said foregoing copy has been compared by me with said original record, and that the same is a correct transcript thereof.

In testimony Whereof, I have hereunto subscribed my name and affixed my seal of office, at the Court House in the City of Cleveland, this 7th day of Jan. 1898.

[SEAL.]

FRED SAAL,

County Recorder,

By J. C. SIEGRIST,

Deputy Recorder.

I, Walter C. Ong, Presiding Judge of the Court of Common Pleas, within and for the Fourth Judicial District of the State of Ohio, in which district is said County of Cuyahoga, do hereby certify that Fred Saal was at the date of the above certificate County Recorder, within and for said Cuyahoga County, and State of Ohio, and that said County Recorder is the officer in whose custody said Land Records are required to be kept by the laws of the State of Ohio, and authorized by the laws of the State of Ohio to certify as aforesaid, and that said attestation to said copy of said is in due form of law.

Signed By Me, and dated at Cleveland, Cuyahoga County, Ohio, this 4th day of Jany. A. D. 1899.

WALTER C. ONG,

Judge as Aforesaid.

(Endorsed.)

Certified copy of record of Adm's' Deed from Adm's of Thomas Lloyd to William B. Lloyd.

Original received for record April 18th, 1850, at — o'clock — M.

Recorded April 20th, 1850 in Volume 45, page 597, Cuyahoga County Records.

JOHN PACKARD,

Dep. Recorder.

And further to maintain the issues on their part, said defendants offered in evidence certified copy of Quit Claim Deed from William Lloyd to Albert M. Lloyd, recorded in Vol. 44, page 726 of Cuyahoga County Records, a true copy of which is as follows:

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William B. Lloyd

to

Albert M. Lloyd.

Know all men by these presents that I William B. Lloyd for the consideration of seven hundred dollars (\$700) received to my full satisfaction of Albert M. Lloyd do hereby remise release and forever quitclaim to him the said Albert M. all my right, title, claim and interest in and to that piece or parcel of land lying in the City & Township of Cleveland, County of Cuyahoga and State of Ohio bounded and described as follows said interest being twenty hundredths and one third & a half of a hundredth being one half of that portion sold me by administrators of Thomas Lloyd which I convey to said Albert M. subject to a contract made with Hezekiah Camp

10th Nov. 1846. In testimony whereof I have hereunto set my hand and seal in the City of New York this thirtieth day of October, A. D. 1849.

W. B. LLOYD. [SEAL.]

Witness-

JOHN MARTIN.

MOSES B. MACLAY.

STATE OF NEW YORK,

City and County of New York, ss:

October 30th 1849 Before me Moses B. Maclay a Commissioner duly appointed by the Governor of Ohio to take the acknowledgement of the parties to deeds &c. within the City and State of New York to be recorded in the said State of Ohio personally came William B. Lloyd and acknowledged the foregoing instrument to be his voluntary act and deed. Witness my hand and official seal this 30th day of October, 1849.

MOSES B. MACLAY, [SEAL.]

Ohio Commissioner.

Rec'd April 22nd, 1850.

Recorded April 23rd, 1850.

CHARLES WINSLOW, *Recorder.*

THE STATE OF OHIO,

Cuyahoga County, ss:

I, Fred Saal, County Recorder of the County of Cuyahoga aforesaid, in whose custody the land records of said county are required by the laws of the State of Ohio, to be kept, do hereby certify that the foregoing copy is taken and copied from the records of said county, as appears on page 726 in Vol. 44 of Deeds, and that said foregoing copy has been compared by me with said original record, and that the same is a correct transcript thereof.

In testimony whereof, I have hereunto subscribed my name and affixed my seal of office, at the Court House, in the City of Cleveland, this 7th day of Jan. 1898.

[SEAL.]

FRED SAAL,

County Recorder.

By J. C. SIEGRIST,

Deputy Recorder.

I, Walter C. Ong, Presiding Judge of the Court of Common Pleas, within and for the Fourth Judicial District of the State of Ohio, in which District is said County of Cuyahoga, do hereby certify that Fred Saal, was at the date of the above certificate, County Recorder, within and for said Cuyahoga County, and State of Ohio, and that said County Recorder is the officer in whose custody said Land Records are required to be kept by the laws of the State of Ohio, and authorized by the laws of the State of Ohio, to certify as aforesaid, and that said attestation to said copy of said record is in due form of law.

Signed By Me, and dated at Cleveland, Cuyahoga County, Ohio, this 4th day of Jan'y A. D. 1899.

WALTER C. ONG,
Judge as Aforesaid.

(Endorsed.)

Certified copy of record of Quit Claim Deed from Wm. B. Lloyd to Albert M. Lloyd.

Original received for record April 22, 1850, at — o'clock — M.
Recorded April 23, 1850 in Volume 44, page 726 Cuyahoga County Records.

CHARLES WINSLOW, *Recorder.*

And further to maintain the issues on their part, said defendants also offered in evidence certified Copy of the Proceedings in the Court of Common Pleas of Cuyahoga County, found in Vol. 53, page 500, Williams etc. vs. Lloyd, et al., a true copy of which is as follows, to-wit:

THE STATE OF OHIO,
Cuyahoga County, ss:

ELLERY G. WILLIAMS and ALBERT M. LLOYD, Adm'rs of Thomas Lloyd, Dec'd.

VS.

WILLIAM B. LLOYD, CHARLES WHITTLESEY, CAROLINE, ROSELLA, Delia, Ann and John H. Lloyd; Jane E., Caroline, Ann, Margaret, Sarah & Thomas L. Hayden; Mary & William Miller; Rosella and Augustus C. Barlow.

Vol. 53-500. Petition for Deed.

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Petition.

Be it remembered that heretofore to wit on the eleventh day of February in the year of our Lord one thousand eight hundred and fifty came the Complainants by their Solicitors and filed in the office of the Clerk of Common Pleas within and for the County of Cuyahoga and State of Ohio the following petition against the said defendants to wit:

To the Honorable Court of Common Pleas within and for the County of Cuyahoga and State of Ohio:

Your petitioners Ellery G. Williams and Albert M. Lloyd both of the City of Cleveland in said County and State duly appointed and qualified administrators on the estate of Thomas Lloyd deceased (late of the City and County of Hartford and State of Connecticut) humbly represent that the said Thomas in his life time on the 23rd day of July 1836 entered into a written contract with one Charles Whittlesey of the City of Cleveland aforesaid to convey to him for the performance of certain stipulations and conditions

specified in said contract all of which your petitioner- allege and so charge the fact to have been complied with) all of this (the said Thomas) entered in one equal undivided sixth part of the following described premises to wit: Situated in the City of Cleveland and bounded as follows, on the south by original lot number one hundred and ninety one, on the west by the present channel of the Cuyahoga River on the north by the waters of Lake Erie and on the east by the west line of Water Street. Your petitioner- further represents that on the 15th day of August 1838 the said Thomas & Charles made and entered into a further agreement in writing whereby the said Thomas agreed to convey to the said Charles on the performance of certain stipulations and conditions specified in said last mentioned agreement (all of which your petitioner- allege and so charge the fact to have been complied with) all of his (the said Thomas') in an additional undivided twelfth part of the premises above described making in all by virtue of both said contract- one equal, undivided fourth part of said premises. Your petitioner- further represents that on the 22nd day of August 1836 the said Thomas made and entered into a written agreement with one William B. Lloyd of the City and County of Hartford in the State of Connecticut on his paying one third of the purchase money therefore which your petitioners allege and so charge the fact to be the said William B. has long since done to convey to him all
 513 his (the said Thomas') interest in one equal undivided third part of the premises first above described. Your petitioner- further represents that the said Thomas died some time in the month of March 1842 seized of his premises leaving William B. Albert M. Caroline, Rosella, Delia, Ann & John Lloyd Jane E. Caroline Ann Margaret Sarah & Thomas L. Hayden (the said Thomas L. resides in the City of Cleveland and is a minor) Mary Miller wife of William Miller and Rosella Barlow wife of Augustus Barlow his heirs at law. Your petitioners therefore pray that the said William B. Lloyd Charles Whittlesey, Caroline, Rosella, Delia Ann & John E. Caroline, Ann Margaret Sarah and Thomas L. Hayden Mary and William Miller Rosella & Augustus C. Barlow may be made parties defendants to this petition that on the final hearing of the same your petitioner- may be ordered and decreed to convey to the said William B. all of said Thomas' interest in one equal undivided third part of the premises first above described and to the said Charles Whittlesey all of said Thomas' interest in one equal undivided fourth part of the premises first above described and that your petitioners may have such other and further relief as the nature of the case requires.

WILLIAMS & CARY,
Pet. Solicitors.

Notice & Proof Of.

And afterwards to wit at the next term of said Court begun and held at Cleveland aforesaid on the fifth day of March, A. D. 1850 came to the petitioners (March 25) and filed the following publication and proof of notice to defendants to wit:

Notice is hereby given to William B. Lloyd Delia Ann Lloyd, Rosella Lloyd, John H. Lloyd, and Caroline Lloyd, Charles Whittlesey, Jane E. Hayden, Caroline Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, Mary Miller and William Miller, Rosella Barlow and Augustus C. Barlow that Albert M. Lloyd and Ellery G. Williams as administrators on the estate of Thomas Lloyd deceased (late of the City and County of Hartford and State of Connecticut) have this day filed in the Court of Common Pleas of Cuyahoga County & State of Ohio a petition setting forth that Thomas Lloyd in his life time and on the 23rd day of July 1836 entered into a written contract with said Charles Whittlesey to convey to him (on the performance of certain stipulations specified in said contract, all of which said petition alleges to have been complied with) all of said Thomas Lloyd's interest in one equal undivided sixth part of the following described premises situated in the City of Cleveland in said County of Cuyahoga and bounded as follows: On the south by original lot No. 191; on the west by the present channel of the Cuyahoga River; on the North by the Water of Lake Erie and on the east by the west line of Water Street; and also that said Thomas Lloyd on the 15th day of August 1838 entered into another written contract with said Charles Whittlesey to convey to him on the performance of certain stipulations specified in said contract all of which said petition alleges have been complied with) all of said Thomas Lloyd's interest in one equal undivided twelfth part of the above described premises, and also setting forth that said Lloyd on the 23rd day of August 1836 entered into another written contract with said William B. Lloyd to convey to him (the said William B. paying his proportion of the purchase money therefor which said petition alleges he has done) all of said Thomas Lloyd's interest in one equal undivided third part of the premises above described; and also setting forth that all the persons above named, except said Charles are heirs at law of said Thomas Lloyd and praying that said Court at the next term thereof will order a decree that said administrators convey to said Charles Whittlesey one fourth part of said premises and to William B. Lloyd one third part of said premises and also for such other and further relief as the nature of the case requires.

Feb. 11, 1850.

WILLIAMS & CARY,
Pet's Solrs.

THE STATE OF OHIO,
Cuyahoga County ss:

Court of Common Pleas, March Term, A. D. 1850.

Personally appeared in open Court Joseph W. Gray and made solemn oath that the notice hereto attached was published for three consecutive weeks previous to the present time of said Court in a newspaper called the Cleveland Plain Dealer and that said newspaper

was during that time printed and in general circulation in said County of Cuyahoga,
Printer's fees \$7.00.

J. W. GRAY.

Subscribed and sworn to before me this 25th day of March A. D. 1850.

ROLAND D. NOBLE,
Deputy Clerk.

Decree.

Whereupon this cause came on to be heard upon the petition of said petitioners and the exhibits and testimony (all of said defendants still failing to appear plead answer or demur to said petition) on consideration whereof and the Court being fully advised in the premises and having found that said *contractors* were fully complied with on the part of said William B. Lloyd and said 515 Charles B. Whittlesey respectively as alleged in said petition do order said administrators to convey to said William B. all of said Thomas Lloyd's interest in one equal undivided third part of the premises described in said petition to convey to said Whittlesey all of said Thomas Lloyd's interest in one equal undivided fourth part of the premises described in said petition for and in behalf of the heirs of said Thomas Lloyd according to the Statute in such cases made and provided and that said William B. Lloyd and Charles Whittlesey each pay one half of the costs of this case to be taxed and that in default of payment thereof an execution issue to collect the same as on judgment at law. Costs for complainants \$5 97-100. Ditto for defendants \$5 97-100 interest from March 5th, 1850.

THE STATE OF OHIO.

Cuyahoga County, ss:

I, Harry L. Vail Clerk of the Court of Common Pleas, within and for said county, and in whose custody the Files, Journals and records of said Court are required by the Laws of the State of Ohio to be kept, hereby certify that the foregoing copy is taken and copied from the records Vol. 53, page 500 of the Proceedings of the Court of Common Pleas within and for said Cuyahoga County, and that said foregoing copy has been compared by me, with the original record, Vol. 53, page 500, and that the same is a correct transcript thereof.

In Testimony Whereof, I do hereto subscribe my name officially, and affix the Seal of said Court at the Court House in the City of Cleveland, in said county, this 31 day of December A. D. 1898.

[SEAL.]

HARRY L. VAIL, *Clerk.*

(Rev. Stamp 10c.)

I, Walter C. Ong, Presiding Judge of the Court of Common Pleas, within and for the Fourth Judicial District of the State of Ohio, in which District is said County of Cuyahoga, do hereby certify, that Harry L. Vail was at the date of the above certificate, and now is, Clerk of said Court of Common Pleas within and for said Cuyahoga County and State of Ohio, and that said Clerk is the officer in whose custody said original record vol. 53, page 500 is required to be kept by the laws of the State of Ohio, and authorized by the laws of the State of Ohio, to certify as aforesaid, and that said attestation to said copy of said record is in due form of law.

516 Signed by me, and dated at Cleveland, Cuyahoga County, Ohio, this 31 day of December A. D. 1898.

WALTER C. ONG,

Judge as Aforesaid.

(Rev. Stamp 10c.)

THE STATE OF OHIO,

Cuyahoga County, ss:

I, Harry L. Vail, Clerk of the Court of Common Pleas, a Court of Record of Cuyahoga County, aforesaid, do hereby certify that Walter C. Ong, by whom the annexed certificate was made was, at the date thereof a Presiding Judge of the Common Pleas Court in and for said County, duly authorized by the laws of Ohio to make the same, and that I am well acquainted with his handwriting and believe his signature thereto is genuine.

In Testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at Cleveland, this 31 day of December, A. D. 1898.

[SEAL.]

HARRY L. VAIL, *Clerk.*

No. 10.

(Rev. Stamp 10c.)

(Endorsed:) Cuyahoga Common Pleas. Williams et al. vs. Lloyd et al. Copy of Record.

And further to maintain the issues on their part, the defendants offered in evidence certified copy of Deed from Adm'rs of Thomas Lloyd, to William B. Lloyd, recorded in Vol. 45, Cuyahoga County Records, page 596. A true copy of same is as follows to-wit:

Administrators of Thomas Lloyd
to
William B. Lloyd.

To all to whom these presents shall come, Greeting:

Know ye that whereas Thomas Lloyd on or about the 22nd day of March A. D. 1836 then in full life being, entered into a written contract with William B. Lloyd whereby he agreed to convey to him

one third in common & undivided of the Bath Street property so called situated in the City of Cleveland in the State of Ohio and whereas said Thomas Lloyd died intestate in the month of March A. D. 1842 & before the completion of said contract leaving as his heirs at law William B. Lloyd, Albert M. Lloyd, Caroline, Rozella, Delia, Ann, Abigail P. and John Henry Lloyd, Jane E.

517 Caroline, Ann, Margaret, Sarah & Thomas L. Hayden, Mary Miller wife of William Miller and Rosella Barlow wife of August C. Barlow and the undersigned Ellery G. Williams & Albert M. Lloyd were duly appointed administrators and whereas the undersigned administrators as aforesaid filed our petition in the Court of Common Pleas in & for the County of Cuyahoga in the State of Ohio setting forth said contract and also one with Chs. Whittlesey and that the said William B. had long since performed his part of said contract to which said petition said heirs were duly made parties & praying we might be ordered & decreed to convey to said William B. all of said Thomas Lloyd's interest in one equal undivided third part in common of that part of said premises situated in the City of Cleveland, County of Cuyahoga, State of Ohio & bounded on the east by the west line of Water Street on the south by the north line of original lot No. one hundred and ninety one, on the west by the present channel of Cuyahoga River and on the north by the waters of Lake Erie, and whereas at the March term A. D. 1850 of said Court such further proceedings were had upon said petition that the following order and decree was made by said Court & entered upon their journal. "At this term this cause came on to be heard upon the petition of said petitioners and the exhibits and testimony (all of said defendants still failing to appear plead answer or demur to said petition) on consideration whereof & the Court being fully advised in the premises & having found that said contracts were fully complied with on the part of said William B. Lloyd and Charles Whittlesey respectively as alleged in said petition do order said administrators to convey to said William B. Lloyd all of said Thomas Lloyd's interest in one equal undivided third part of the premises described in said petition & to convey to said Charles Whittlesey all of said Thomas Lloyd's interest in one equal undivided fourth part of the premises described in said petition for and in behalf of the heirs of said Thomas Lloyd according to the statute in such cases made and provided & that said William B. Lloyd & Charles Whittlesey each pay one half of the costs in this case to be taxed and that in default of payment thereof an execution issue to collect the same; Now therefore in pursuance of said order and decree we do hereby for and in behalf of the heirs of said Thomas Lloyd deceased and in consideration of one dollar, grant and convey unto said William B. Lloyd his heirs and assigns all such

518 right, title and interest as the said Thomas Lloyd had in his lifetime in & to one equal undivided third part of the premises hereinbefore described To have and to hold the said tract or parcel of land with the privileges & appurtenances thereof to him the said William B. Lloyd his heirs and assigns forever. In wit-

ness whereof we have hereunto set our hands and seals this 17th day of April, A. D. 1850.

ELLERY G. WILLIAMS, [SEAL.]

ALBERT M. LLOYD, [SEAL.]

As Administrators as Aforesaid.

Signed, sealed and delivered in the presence of

I. C. VAIL.

JOHN BARR.

THE STATE OF OHIO,

Cuyahoga County, ss:

CLEVELAND, April 17th, 1850.

Personally appeared before me the within named Albert M. Lloyd & Ellery G. Williams who acknowledged that they did sign and seal the foregoing instrument and that the same is their free act and deed.

JOHN BARR,

Justice of the Peace.

The above deed was delivered to William B. Lloyd April 17, 1850.

WM. B. LLOYD.

By His Agent, A. M. LLOYD.

Witness,

S. WILLIAMSON.

Received April 18, 1850.

Recorded April 19, 1850.

[SEAL.]

JOHN PACKARD,

Dep. Recorder.

THE STATE OF OHIO,

Cuyahoga County, ss:

I, Fred Saal, County Recorder of the County of Cuyahoga aforesaid, in whose custody the land records of said county are required by the laws of the State of Ohio, to be kept, do hereby certify that the foregoing copy is taken and copied from the records of said county, as appears on page 596 in Vol. 45 of Deeds, and that said foregoing copy has been compared by me with said original record, and that the same is a correct transcript thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed my seal of Office, at the Court House, in the City of Cleveland, this 10th day of Jan., 1898.

[SEAL.]

FRED SAAL,

County Recorder,

By J. C. SIEGRIST,

Deputy Recorder.

I, Walter C. Ong, Presiding Judge of the Court of Common Pleas, within and for the Fourth Judicial District of the State of Ohio, in which district is said County of Cuyahoga, do hereby certify, that Fred Saal was at the date of the above certificate County Recorder, within and for said Cuyahoga County, and State of Ohio, and that said County Recorder is the officer in whose custody said Land Records are required to be kept by the laws of the State of Ohio, and authorized by the laws of the State of Ohio to certify as aforesaid, and that said attestation to said copy of said record is in due form of law.

Signed By Me, and dated at Cleveland, Cuyahoga County, Ohio, this 4th day of Jan'y A. D. 1899.

WALTER C. ONG,
Judge as Aforesaid.

(Endorsed.)

Certified copy of record of Deed from Adm'rs of Thomas Lloyd to William B. Lloyd.

Original Received for record April 18, 1850 at — o'clock — M.
Recorded April 19, 1850, in Volume 45, page 596, Cuyahoga County Records.

JOHN PACKARD,
Dep. Recorder.

And further to maintain the issues on their part, the defendants offered in evidence certified copy of a Power of Attorney from the heirs of Thomas Lloyd, to Albert M. Lloyd, recorded in the Records of Cuyahoga County, Vol. 46, page 513. A true copy thereof is as follows, to wit:

Thomas Lloyd (Heirs of) to Albert M. Lloyd (P. A.)

We the heirs of Thomas Lloyd deceased late of Hartford Connecticut do hereby constitute and appoint Albert M. Lloyd our Agent and Attorney for the conduct and management of all business in which we have any interest in Ohio growing out of the estate of Thomas Lloyd deceased and particularly for the purpose of closing all outstanding contracts made by our late father for the sale of lands in the State of Ohio, and for that purpose we do hereby authorize and empower him to make and execute in our name and behalf any deed of quit claim of all or any interest which we may jointly possess in and to such lands.

CAROLINE LLOYD.	[SEAL.]
ROSELLA LLOYD.	[SEAL.]
DELIA ANN LLOYD.	[SEAL.]
ABIGAIL P. LLOYD.	[SEAL.]
WM. B. LLOYD.	[SEAL.]
J. H. LLOYD.	[SEAL.]

Hartford, Nov. 15, '42.

520 Signed, sealed and delivered in presence of
ROSELLA L. HAYDEN.
NATHANIEL GOODWIN.

STATE OF CONNECTICUT,

County of Hartford, ss:

HARTFORD, Nov. 15, 1842.

Personally appeared Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, William B. Lloyd and John H. Lloyd signers and sealers of the foregoing instrument and acknowledged the same to be their free act and deed.

Before me,

NATHANIEL GOODWIN,

Justice of the Peace.

Received April 17, 1850.

Recorded April 18, 1850.

JOHN PACKARD,

Dep. Recorder.

THE STATE OF OHIO,

Cuyahoga County, ss:

I, Fred Saal, County Recorder of the County of Cuyahoga aforesaid, in whose custody the land records of said county are required by the laws of the State of Ohio, to be kept, do hereby certify that the foregoing copy is taken and copied from the records of said county, as appears on page 513 in Vol. 46 of Mortgages, and that said foregoing copy has been compared by me with said original record, and that the same is a correct transcript thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed my seal of office, at the Court House, in the City of Cleveland, this 7th day of Jan. 1898.

[SEAL.]

FRED SAAL,

County Recorder,

By J. C. SIEGRIST,

Deputy Recorder.

I, Walter C. Ong, Presiding Judge of the Court of Common Pleas, within and for the Fourth Judicial District of the State of Ohio, in which district is said County of Cuyahoga, do hereby certify, that Fred Saal was at the date of the above certificate County Recorder, within and for said Cuyahoga County, and State of Ohio, and that said County Recorder is the officer in whose custody said Land Records are required to be kept by the laws of the State of Ohio, and authorized by the laws of the State of Ohio to certify as aforesaid, and that said attestation to said copy of said record is in due form of law.

521 Signed By Me, and dated at Cleveland, Cuyahoga County, Ohio, this 4th day of Jany. A. D. 1899.

WALTER C. ONG,

Judge as Aforesaid.

(Endorsed.)

Certified copy of record of Power of Attorney from Thomas Lloyd (heirs of) to Albert M. Lloyd.

Original received for record April 17, 1850, at — o'clock — M.
Recorded April 18, 1850 in Volume 46, page 513, Cuyahoga
County Records.

JOHN PACKARD,
Dep. Recorder.

And further to maintain the issues on their part, the defend-
ants offered in evidence certified copy of Deed from Caroline Lloyd
and others, to Frederick Harbach, recorded in Vol. 45, page 599,
Cuyahoga County Records. A true copy thereof is as follows,
to wit:

Caroline Lloyd & Other-
to
Frederick Harbach.

To all persons to whom these presents shall come, Greeting:

Know ye that we Caroline Lloyd, Rozella Lloyd, Delia Ann Lloyd,
Abigail P. Lloyd, John Henry Lloyd for divers good causes there-
unto moving particularly for the sum of one dollar received to our
full satisfaction of Frederick Harbach of Cleveland do hereby
remise, release and forever quitclaim to the Frederick Harbach all
the right title and interest we have or ought to have in and to the
following property situated in the City of Cleveland Cuyahoga
County State of Ohio Known as the Bath street property, bounded
west by Cuyahoga River, East by Water Street, north by Lake Erie
and South by the north line of lot No. one hundred and ninety-
one together with the appurtenances thereunto belonging. To have
and to hold the above quit claimed property to him the said Fred-
erick and to his heirs and assigns forever to his and their own
proper use and behoof. In witness whereof we have hereunto set
our hands and seals this 18th day of April, A. D. eighteen hundred
and fifty.

CAROLINE LLOYD,
ROZELLA LLOYD,
DELIA ANN LLOYD,
ABIGAIL P. LLOYD,
JOHN HENRY LLOYD,

By Their Attorney, ALBERT M. LLOYD.

522 Signed, sealed and delivered in presence of—

JOHN BARR.
JAMES C. CARY.

THE STATE OF OHIO,
Cuyahoga County, ss:

CLEVELAND, *April 18th, 1850.*

Personally appeared before me the above named Albert M. Lloyd
who is to me well known who acknowledged that he did sign and

seal the above deed in capacity as agent and the same is his free act and deed.

JOHN BARR,
Justice of the Peace.

Rec'd 18th, & Recorded 20th April, 1850.

JOHN PACKARD,
Dep. Recorder.

THE STATE OF OHIO,
Cuyahoga County, ss:

I, Fred Saal, County Recorder of the County of Cuyahoga aforesaid, in whose custody the land records of said county are required by the laws of the State of Ohio, to be kept, do hereby certify that the foregoing is taken and copied from the records of said county, as appears on page 599 in Vol. 45 of Deeds, and that said foregoing copy has been compared by me with said original record, and that the same is a correct transcript thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed my seal of office, at the Court House, in the City of Cleveland, this 7th day of Jan. 1898.

FRED SAAL,
County Recorder,

[SEAL.]

By J. C. SIEGRIST,
Deputy Recorder.

I, Walter C. Ong, Presiding Judge of the Court of Common Pleas, within and for the fourth Judicial District of the State of Ohio, in which District is said County of Cuyahoga, do hereby certify that Fred Saal, was at the date of the above certificate, County Recorder, within and for said Cuyahoga County, and State of Ohio, and that said County Recorder is the officer in whose custody said Land Records are required to be kept by the laws of the State of Ohio, and authorized by the laws of the State of Ohio, to certify as aforesaid, and that said attestation to said copy of said record is in due form of law.

Signed By Me, and dated at Cleveland, Cuyahoga County, Ohio, this 4th day of Jany. A. D. 1899.

WALTER C. ONG,
Judge as Aforesaid.

(Endorsed.)

523 Certified copy of record of Quit Claim Deed from Caroline Lloyd and others to Frederick Harbach.

Original received for record April 18th, 1850, at — o'clock —. M.
Recorded April 20th, 1850 in Volume 45, page 599, Cuyahoga County Records.

JOHN PACKARD,
Dep. Recorder.

And further to maintain the issues on their part, the defendants offered in evidence certified copy of Quit Claim Deed from William B. Lloyd to Frederick Harbach, recorded in Vol. 45, page 598, Cuyahoga County Records. A true copy thereof is as follows, to-wit:

William B. Lloyd
to
Frederick Harbach.

To all people to whom these presents shall come, Greeting:

Know ye that I, William B. Lloyd for divers good causes and considerations thereunto moving especially for the sum of fifteen thousand dollars received to my full satisfaction of Frederick Harbach have given granted remised released and forever quit claimed and by these presents absolutely give grant remise release and fofever quit claim unto the said Frederick Harbach and to his heirs and assigns forever all such right, & title as I the said William B. Lloyd had or ought to have in or to the following described land in the City of Cleveland County of Cuyahoga & State of Ohio and known as the Bath street property, bounded and described as follows, to wit, South by the north line of lot Number one hundred and ninety-one (191) east by Water street North by Lake Erie & *and* west by the Cuyahoga River hereby intending to transfer & convey to said Frederick Harbach his heirs & assigns, all right that I the said William B. Lloyd have in said property whether legal or equitable embracing the control of all suits pending therefor on the fifth day of October A. D. 1849 and the judgments since rendered thereon & all rights & interest growing out of the same or in any way connected therewith or with said property, the whole however being conveyed subject to a contract made by the said William B. Lloyd and Hezekiah Camp of the first part and the Cleveland, Columbus & Cincinnati Rail Road Company of the second part dated August 8th, 1849, all the terms and conditions of which on the part of said William B. Lloyd to be performed and fulfilled. The said Frederick Harbach is to well and truly perform & fulfill
& save the said William B. Lloyd harmless therefrom this
524 conveyance being made in fulfillment of a contract with
said Harbach dated October 5, 1849. To have and to hold

the premises aforesaid to him the said Frederick Harbach his heirs and assigns to the only use and behoof of the said Frederick Harbach his heirs and assigns forever so that neither I the said William B. Lloyd nor my heirs nor any other person or persons claiming title through or under me shall or will hereafter claim or demand any right or title to the premises of any part thereof but they and every one of them shall by these presents be excluded and forever barred. And I the said William B. Lloyd do for myself & my heirs covenant to and with the said Frederick Harbach, his heirs & assigns that the premises aforesaid are free from all encumbrances done or suffered by through or under me & that I the said William B. Lloyd & my heirs shall & will forever warrant &

defend the above granted & bargained premises unto him the said Frederick Harbach his heirs & assigns against all lawful claims and demands whatsoever in any manner arising or accruing by through or under me. In witness whereof I have hereunto set my hand & seal the — day of November in the year of our Lord one thousand eight hundred and forty nine.

W. B. LLOYD. [SEAL.]

Signed, sealed and delivered in presence of—

JOSEPH LEE.

MOSES B. MACLAY.

STATE OF NEW YORK,

City and County of New York, ss:

NOVEMBER 10, A. D. 1849.

Before me Moses B. Maclay a Commissioner appointed by the Governor of Ohio to take acknowledgements of parties to Deeds — and for said City and State to be used and recorded in Ohio, personally came the within named Wm. B. Lloyd and acknowledged the within and foregoing conveyance to be his voluntary act and deed.

Witness my hand and official seal the 10th day of November, A. D. 1849.

MOSES B. MACLAY, [SEAL.]

Ohio Commissioner.

This deed delivered this 18th day of April, A. D. 1850 in our presence.

S. WILLIAMSON.

H. CAMP.

Received 18th & Recorded 20th April, 1850.

JOHN PACKARD,

Dep. Recorder.

525 THE STATE OF OHIO,

County of Cuyahoga, ss:

I, Fred Saal, County Recorder of the County of Cuyahoga aforesaid, in whose custody the land records of said county are required by the laws of the State of Ohio, to be kept, do hereby certify that the foregoing copy is taken and copied from the records of said county, as appears on page 598 in Vol. 45 of Deeds, and that said foregoing copy has been compared by me with said original record, and that the same is a correct transcript thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed my seal of office, at the Court House, in the City of Cleveland, this 7th day of Jan. 1898.

[SEAL.]

FRED SAAL,

County Recorder,

By J. C. SIEGRIST,

Deputy Recorder.

I, Walter C. Ong, Presiding Judge of the Court of Common Pleas, within and for the Fourth Judicial District of the State of Ohio, in which district is said County of Cuyahoga, do hereby certify, that Fred Saal was at the date of the above certificate County Recorder, within and for said Cuyahoga County, and State of Ohio, and that said County Recorder is the officer in whose custody said Land Records are required to be kept by the laws of the State of Ohio and authorized by the laws of the State of Ohio to certify as aforesaid, and that said attestation to said copy of said record is in due form of law.

Signed By Me, and dated at Cleveland, Cuyahoga County, Ohio,
this 4th day of Jan'y A. D. 1899.

WALTER C. ONG,
Judge, as Aforesaid.

(Endorsed.)

Certified copy of record of Quit Claim Deed from William B. Lloyd to Frederick Harbach.

Original received for record April 18, 1850, at — o'clock — M.

Recorded April 20, 1850, in Volume 45, Page 598, Cuyahoga County Records.

JOHN PACKARD,
Dep. Recorder.

And further to maintain the issues on their part, the defendants offered in evidence certified copy of Deed from Albert M. Lloyd and wife, to Frederick Harbach, recorded in Vol. 47, page 297, Cuyahoga County Records. A true copy thereof is as follows, to wit:

526 Albert M. Lloyd & Wife
to
Frederick Harbach.

To all to whom these presents shall come, Greeting;

Know ye that I Albert M. Lloyd for divers good causes & considerations thereunto moving especially for the sum of one thousand dollars received to my full satisfaction of Frederick Harbach have given granted remised released and forever quitclaimed and by these presents absolutely give grant remise release & forever quitclaim unto the said Frederick Harbach and to his heirs & assigns forever all such right & title as I the said Albert M. Lloyd have or ought to have in or to the following described land in the City of Cleveland County of Cuyahoga and State of Ohio and known as the Bath Street property bounded and described as follows: to wit south by the north line of lot No. one hundred and ninety one (191) east by Water Street, north by Lake Erie & west by the Cuyahoga River hereby intending to transfer & convey to said Frederick Harbach his heirs & assigns all rights that I the said Albert M. Lloyd have in said property whether legal or equitable embracing the control of all suits pending therefor on the fifth day of October A. D. 1849

and the judgments since rendered thereon & all rights & interest growing out of the same or in any way connected therewith or with said property the whole however being conveyed subject to a contract made by William B. Lloyd and Hezekiah Camp the tenth day of November A. D. 1846 all the terms and conditions of which on the part of said William B. Lloyd to be performed & fulfilled the said Frederick Harbach is to well and truly perform & fulfill & save the said William B. Lloyd harmless therefrom. To have and to hold the premises aforesaid to him the said Frederick Harbach his heirs & assigns to the only use and behoof of the said Frederick Harbach his heirs & assigns forever so that neither I the said Albert M. Lloyd nor my heirs nor any other person or persons claiming title through or under me shall or will hereafter claim or demand any right or title to the premises or any part thereof but they & every one of them shall by these presents be excluded & forever barred. And I the said Albert M. Lloyd do for myself & my heirs covenant to & with the said Frederick Harbach his heirs & assigns that the premises aforesaid are free from all incumbrances done or suffered by through or under me & that I the said Albert M. Lloyd & my heirs shall & will forever warrant & defend the above granted & bargained premises unto him the said Frederick Harbach his heirs & assigns against all lawful claims and demands whatsoever in any manner arising or accruing by through or under me. And I Mary A. Lloyd wife of said Albert M. do hereby remise release & forever quit claim to the said Frederick Harbach & his heirs & assigns all my right & title of dower in the above described premises. In witness whereof we have hereunto set our hands and seals this 15th day of November, A. D. 1850.

ALBERT M. LLOYD. [SEAL.]

MARY A. LLOYD. [SEAL.]

Signed, sealed & delivered in presence of

SARAH A. LILLEY.

JOHN BARR.

THE STATE OF OHIO,

Cuyahoga County, ss:

CLEVELAND, Nov. 13, A. D. 1850...

Personally appeared before me Albert M. Lloyd and Mary A. Lloyd his wife who acknowledged that they did sign and seal the foregoing instrument and that the same is their free act and deed. I further certify that I did examine the said Mary A. Lloyd separate and apart from her said husband and did then and there make known to her the contents of the within deed and upon that examination she declared that she is still satisfied therewith.

JOHN BARR,

Justice of the Peace.

Received Nov. 16, 1850.

Recorded Nov. 22, 1850.

JOHN PACKARD,

Dep. Recorder.

THE STATE OF OHIO.

Cuyahoga County, ss:

I, Fred Saal, County Recorder of the County of Cuyahoga aforesaid, in whose custody the land records of said county are required by the laws of the State of Ohio, to be kept, do hereby certify that the foregoing copy is taken and copied from the records of said county, as appears on page 297 in Vol. 47 of Deeds, and that said foregoing copy has been compared by me with said original record, and that the same is a correct transcript thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed my seal of office, at the Court House, in the City of Cleveland, this 7th day of Jan. 1898.

[SEAL.]

FRED SAAL,

County Recorder,

By J. C. SIEGRIST,

Deputy Recorder.

528 I, Walter C. Ong, Presiding Judge of the Court of Common Pleas, within and for the Fourth Judicial District of the State of Ohio, in which district is said County of Cuyahoga, do hereby certify, that Fred Saal was at the date of the above certificate County Recorder, within and for said Cuyahoga County, and State of Ohio, and that said County Recorder is the officer in whose custody said Land Records are required to be kept by the laws of the State of Ohio and authorized by the laws of the State of Ohio to certify as aforesaid, and that said attestation to said copy of said record is in due form of law.

Signed By Me, and dated at Cleveland, Cuyahoga County, Ohio, this 4th day of Jan'y A. D. 1899.

WALTER C. ONG,

Judge as Aforesaid.

(Endorsed.)

Certified Copy of Record of Quit Claim Deed From Albert M. Lloyd & wife To Frederick Harbach.

Original received for record Nov. 16, 1850, at — o'clock — M.
Recorded Nov. 22 1850 In Volume 47, Page 297 Cuyahoga County Records.

JOHN PACKARD,

Dep. Recorder.

And further to maintain the issues on their part, the defendants offered in evidence certified copy of record of Power of Attorney from Harriet L. Harbach, to Horace Foote, recorded in Vol. 49, page 561, Cuyahoga County Records. A true copy thereof is as follows, to wit:

Harriet L. Harbach to Horace Foote (P. A.)

Know all men by these presents that I, Harriet L. Harbach of the City of Cleveland, do hereby constitute and appoint Horace Foote of Cuyahoga County Ohio attorney at law to be my true sufficient and lawful attorney for me and in my name for my sole use to superintend manage and control any and all property, real or personal of every name and kind and description which I have or may have or to which I am entitled as Legatee or devisee under the last will and testament of my late husband, Frederick Harbach, late of Cleveland, Ohio, or which I have or may have or to which I am or may be entitled as widow or distributee of the estate of my said husband, and I do hereby vest in and give to my said attorney full power and authority to make and effect by agreement & compromise, or by the institution or legal proceedings for that purpose, partitions of any and all real estate in which I have or may have

529 an interest as a tenant in common with the co-partners of & Co-contractors with my said husband or with any and all other persons whatsoever & to convey any and all real estate held in the name of my said husband in trust for said co-partners & co-contractors or for any or all of them, or for any & all other persons whatever. And for the purposes aforesaid my said attorney is hereby authorized to convey my said interest in any and all parts & portions of such real estate and to convey all and every such trust estate by a release, quit-claim or other deed of conveyance executed for me and in my name. And I do hereby vest in and give to my said attorney full power and authority to lease & demise and to enter into contracts of sale and to sell — convey for me and in my name by deeds containing the usual covenants any and all real estate which I have or may have, or to which I am entitled as aforesaid and to sell & dispose of any and all choses in action any and all stocks and any and all personal property of every name and kind which I have, may have, or to which I am or may be entitled as aforesaid, and my said attorney is hereby authorized to demand, receive and collect by suit or otherwise any and all rents, and any and all monies that may arise from and become due for the use and occupancy of or for the price and consideration of the sale of any or all the aforesaid real estate or that may arise from and become due as the price & consideration of the sale of any or all the aforesaid personal property, to demand, receive, and collect by suit or otherwise any and all monies, and to demand receive and recover by suit any and all property of whatever kind or nature that have or may become due & owing to me or that has or may have arisen and accrued to me out of and as a part & portion of my said husband's estate whether such monies or such property shall be in the hands of, or in the possession of the executors of the last will and testament of my said husband or in the hands or in the possession of any other person or persons as executors or in the hands of, or under the control and the possession of any administrator or administrators that shall or may be appointed to administer upon the estate of my said husband or any

part thereof. And my said attorney is further authorized to demand receive collect by suit or otherwise and to recover any and all monies and any and all property of whatever name and nature that may be due and owing to me, or belonging to me the same being in the possession of and detained from me by the co-partners of and co-contractors with my late husband or being in the possession of and detained by any other person or persons whatever and to demand receive collect by suit or otherwise and recover any and all
 530 monies arising and accruing to me upon any bond, bill, note, contract or other evidence of claim, and any and all monies arising and accruing to me by reason of any damages done to or injuries sustained by me in the possession and enjoyment of the said aforesaid personal & real estate or for the breach of any contract whatever, and for the purposes aforesaid I do hereby grant to my said attorney full power & authority to execute and deliver all needful instruments and papers whether under seal or otherwise, to give receipts and acquittances to institute and prosecute to final judgment decree and execution any and all process in law and equity, to defend any and all suits that may be instituted against me, or that may endanger me in the possession & enjoyment of said real and personal estate, to pay any and all taxes and assessments that may be levied upon or assessments upon the aforesaid estate to employ & to pay for legal counsel & advisers to submit any and all matters in dispute to arbitration or the same to settle and compromise, to appoint one or more substitutes under him & the same to revoke at his pleasure and generally to do and perform all such acts, matters and things as my said attorney shall deem necessary or expedient for the complete and effectual execution of the authority hereinbefore granted as fully as I might and could do if I were present hereby ratifying & confirming all the acts of my said attorney or of his substitute done by virtue of and in pursuance of these presents. In witness whereof I have hereunto set my hand and seal this 29th day of March A. D. 1851.

HARRIET L. HARBACH. [SEAL.]

Signed, sealed and delivered in presence of

JOHN T. NEWTON.

JNO. I. HERRICK.

THE STATE OF OHIO,
Cuyahoga County, ss:

On this 31st day of March A. D. 1851 personally appeared Harriet L. Harbach who acknowledged that she did sign and seal the foregoing instrument and that the same is her free act and deed before me.

JOHN T. NEWTON,
Notary Public.

Received April 1, 1851.

Recorded April 5, 1851.

JOHN PACKARD,
Dep. Recorder.

THE STATE OF OHIO,
Cuyahoga County, ss:

I, Fred Saal, County Recorder of the County of Cuyahoga aforesaid, in whose custody the land records of said county are
 531 required by the laws of the State of Ohio, to be kept, do hereby certify that the foregoing copy is taken and copied from the records of said county, as appears on page 561 in Vol. 49 of Mortgages, &c., and that said foregoing copy has been compared by me with said original record, and that the same is a correct transcript thereof.

In testimony whereof, I have hereunto subscribed my name and affixed my seal of office, at the Court House, in the City of Cleveland, this 10th day of Jan. 1898.

[SEAL.]

FRED SAAL,
County Recorder,
 By J. C. SIEGRIST,
Deputy Recorder.

I, Walter C. Ong, Presiding Judge of the Court of Common Pleas within and for the Fourth Judicial District of the State of Ohio, in which district is said County of Cuyahoga, do hereby certify, that Fred Saal was at the date of the above certificate County Recorder, within and for said Cuyahoga County, and State of Ohio, and that said County Recorder is the officer in whose custody said Land Records are required to be kept by the laws of the State of Ohio, and authorized by the laws of the State of Ohio to certify as aforesaid, and that said attestation to said copy of said record is in due form of law.

(Endorsed.)

Certified copy of record of Power of Attorney from Harriet L. Harbach to Horace Foote.

Original received for record April 1st, 1851, at — o'clock — M.

Recorded April 5th, 1851, in Volume 49, page 561, Cuyahoga County Records.

JOHN PACKARD,
Dep. Recorder.

And further to maintain the issues on their part, the defendants offered in evidence certified copy of Record of Power of Attorney from Harriet L. Harbach, Guardian, to Horace Foote, recorded in Vol. 49, page 559, Cuyahoga County Records. A true copy of same is as follows, to wit:

Harriet L. Harbach to Horace Foote (P. A.)

Know all men by these presents that, I, Harriet L. Harbach of the City of Cleveland in the State of Ohio one of the Guardians of Thomas Harbach infant son of Frederick Harbach of the said City of Cleveland, deceased, do for myself hereby constitute and

appoint Horace Foote of the said City of Cleveland Attorney at law my true and lawful attorney for me and in my name and behalf as such Guardian to take and have the care oversight, and
532 management of all and singular the rights interests property and estate of every name and description whether real, personal or mixed and wherever situated, belonging to my said ward or to which he may be in any manner entitled as an heir at law of his said father Frederick Harbach deceased and in my name and behalf as such guardian to lease any part or portion of the said property and estate of my said ward and collect and receive the rents accruing from the same to institute and carry on to their final completion any proceedings in law or in equity for the purpose of selling any part of said real estate & receiving the purchase money thereof or of making partition of any part thereof which may belong to my said ward in common with any other person or persons and also to make such partition by agreement with the other tenants in common with my said Ward as shall seem to my said attorney to be most for the benefit of my said ward, also to do and transact any and all matters and things that may be necessary or proper in relation to any property the legal title whereof was in said deceased at the time of his death or for which the said deceased held a contract in his own name alone and in which Amasa Stone Jr. & Stillman Witt may claim an interest either as surviving partners or tenants in common in equity with the said deceased and to institute and prosecute and to appear and defend against any proceeding at law or in equity that may seem to be necessary to settle the rights of any and all persons concerned therein to ask demand and receive of and from any and all the executors of the last will and testament of the said deceased and of and from any administrator or administrators on the estate of said deceased all and singular the monies and other property at any time in their hands or the hands of any of them belonging to my said ward or to which I may be entitled as such Guardian as aforesaid to commence and prosecute to final judgment decree and execution any and all suits that may be necessary to protect the interests and title of my said ward, or to recover any debt, damages or other demand in favor of my said Ward, or of myself as such Guardian as aforesaid and appear and defend against any suit that may be instituted against my said ward to make execute and deliver any and all such contracts receipts deeds and other instruments in writing either with or without seal as shall be proper in the performance of any and all of the matters and things herein authorized to be done by my said attorney to pay all taxes upon said property of my said Ward, to settle and compromise any matter of difference that may arise in relation
533 to any of the matters and things herein specified upon such terms as shall appear most for the interest of my said Ward and to do and transact any and all things pertaining to the premises and every part thereof in as full and ample a manner as I myself as such Guardian could do in my own person, hereby ratifying and confirming every act and thing which my said at-

torney shall lawfully do in the premises. In witness whereof I have hereunto set my hand and seal this 29th day of March A. D. 1851.

HARRIET L. HARBACH. [SEAL.]

Signed, sealed and delivered in presence of—

JOHN T. NEWTON.
THOMAS S. HARBACH.

THE STATE OF OHIO,
Cuyahoga County, ss:

On the 29th day of March, A. D. 1851, Personally appeared Harriet L. Harbach one of the Guardians of Thomas Harbach and acknowledged that she did sign and seal the foregoing instrument and that the same is her free act and deed. Before me

JOHN T. NEWTON,
Notary Public.

Received April 1, 1851.
Recorded April 5, 1851.

JOHN PACKARD,
Dep. Recorder.

THE STATE OF OHIO,
Cuyahoga County, ss:

I, Fred Saal, County Recorder of the County of Cuyahoga aforesaid, in whose custody the land records of said county are required by the laws of the State of Ohio, to be kept, do hereby certify that the foregoing copy is taken and copied from the records of said county, as appears on page 559 in Vol. 49 of Mortgages, &c., and that the said foregoing copy has been compared by me with said original record, and that the same is a correct transcript thereof.

In testimony whereof, I have hereunto subscribed my name and affixed my seal of office, at the Court House, in the City of Cleveland, this 10th day of Jan. 1898.

[SEAL.]

FRED SAAL,
County Recorder,
By J. C. SIEGRIST,
Deputy Recorder.

I, Walter C. Ong, Presiding Judge of the Court of Common Pleas, within and for the Fourth Judicial District of the State of Ohio, in which district is said County of Cuyahoga, do hereby certify, that Fred Saal was at the date of the above certificate
534 County Recorder, within and for said Cuyahoga County, and State of Ohio, and that said County Recorder is the officer in whose custody said Land Records are required to be kept by the laws of the State of Ohio, and authorized by the laws of the State of Ohio to certify as aforesaid, and that said attestation to said copy of said record is in due form of law.

Signed by me, and dated at Cleveland, Cuyahoga County, Ohio,
this 4th day of Jany. A. D. 1899.

WALTER C. ONG,
Judge as Aforesaid.

(Endorsed.)

Certified copy of record of Power of Attorney from Harriet L. Harbach to Horace Foote.

Original received for record April 1st, 1851, at — o'clock —. M.

Recorded April 5th, 1851 in Volume 49, page 559, Cuyahoga County Records.

JOHN PACKARD,
Dep. Recorder.

And further to maintain the issues on their part, the defendants offered in evidence certified copy of Power of Attorney from John I. Herrick to Horace Foote, recorded in Vol. 49, page 563, Cuyahoga County Records. A true copy of same is as follows, to wit:

John I. Herrick
to
Horace Foote.
(P. A.)

Know all men by these presents, that John I. Herrick of the City of New York in the State of New York as Guardian of Maria Louise Harbach infant daughter of Frederick Harbach late of the City of Cleveland in the State of Ohio deceased do hereby constitute and appoint Horace Foote of said City of Cleveland, attorney at law my true and lawful attorney for me and in my name and behalf as such Guardian to take & have the care, oversight and management of all and singular the rights, interest property and estate of every name and description whether real, personal or mixed and wherever situated, belonging to my said ward or to which she may be in any manner entitled as an heir at law of her said father Frederick Harbach deceased and in my name and behalf as such Guardian to lease any part or portion of the said property and estate of my said ward, and collect and receive the rents accruing from the same to institute and carry on to their final completion any proceedings in law or equity for the purpose of selling any part of said real estate and receiving the purchase money thereof or making partition of any part thereof which may belong to my said ward in common with any other person or persons, and also to make such

535 partition by agreement with the other tenants in common with my said Ward as shall seem to my said attorney to be most for the benefit of my said ward also to do and transact any and all matters and things that may be necessary or proper in relation to any property the legal title whereof was in said deceased at the time of his death or for which the said deceased held a contract in his own name alone and in which Amasa Stone Jr. and

Stillman Witt may claim an interest either as surviving partners or tenants in common in equity with the said deceased and to institute and prosecute or appear and defend against any proceeding at law or in equity that may seem to be necessary in order to settle the right of any and all the parties concerned therein to ask, demand, receive of and from any and all the executors of the last will and testament of said deceased and of and from any administrator or administrators on the estate of said deceased, all and singular the monies and other property at any time in their hands or the hands of any of them be^{com}ing to my said Ward or to which I may be entitled as such Guardian as aforesaid to commence and prosecute to final judgment decree and execution any and all suits that may be necessary to protect the interest and title of my said Ward or to recover any debt damages or other demand in favor of my said ward or of myself as such Guardian as aforesaid and appear and defend against any suit that may be instituted against my said Ward to make execute and deliver any and all such contracts, receipts, deeds and other instruments in writing either with or without seal as shall be proper in the performance of any and all of the matters and things herein authorized to be done, to pay any and all taxes upon the said property of my said Ward, to settle and compromise any matters of difference that may arise in relation to any of the matters and things herein specified upon such terms as shall appear most for the interest of my said Ward and to do and transact any and all other things pertaining to the premises and every part thereof in as full and ample a manner as I myself as such Guardian could do in my own person, hereby ratifying and confirming every act and thing which my said attorney shall lawfully do in the premises. In witness whereof I have hereunto set my hand and seal this 29th day of March A. D. 1851.

JOHN I. HERRICK. [SEAL.]

Signed sealed and delivered in presence of—

JOHN T. NEWTON.

R. P. HERRICK.

536 THE STATE OF OHIO,
Cuyahoga County, ss:

On this 29th day of March, A. D. 1851, personally appeared John I. Herrick Guardian of Maria Louise Harbach and acknowledged that he signed and sealed the foregoing instrument and that the said is his free act and deed. Before me

JOHN T. NEWTON,
Notary Public.

Received April 1, 1851.

Recorded April 5, 1851.

JOHN PACKARD,

Dep. Recorder.

THE STATE OF OHIO,
Cuyahoga County, ss:

I, Fred Saal, County Recorder of the County of Cuyahoga aforesaid, in whose custody the land records of said county are required by the laws of the State of Ohio, to be kept, do hereby certify that the foregoing copy is taken and copied from the records of said county, as appears on page 563 in Vol. 49 of Mortgages, &c., and that said foregoing copy has been compared by me with said original record, and that the same is a correct transcript thereof.

In testimony whereof, I have hereunto subscribed my name and affixed my seal of office, at the Court House, in the City of Cleveland, this 10th day of Jan. 1898.

[SEAL.]

FRED SAAL,
County Recorder,
 By J. C. SIEGRIST,
Deputy Recorder.

I, Walter C. Ong, Presiding Judge of the Court of Common Pleas, within and for the Fourth Judicial District of the State of Ohio, in which district is said County of Cuyahoga, do hereby certify, that Fred Saal was at the date of the above certificate County Recorder, within and for said Cuyahoga County, and State of Ohio, and that said County Recorder is the officer in whose custody said Land Records are required to be kept by the laws of the State of Ohio, and authorized by the laws of the State of Ohio to certify as aforesaid, and that said attestation to said copy of said record is in due form of law.

Signed by me, and dated at Cleveland, Cuyahoga County, Ohio, this 4th day of Jan'y A. D. 1899.

WALTER C. ONG,
Judge as Aforesaid.

(Endorsed.)

Certified copy of Record of Power of Attorney from John I. Herrick to Horace Foote.

537 Original received for record April 1st, 1851 at — o'clock — M.

Recorded April 5th, 1851 in Volume 49, page 563, Cuyahoga County Records.

JOHN PACKARD,
Dep. Recorder.

And further to maintain the issues on their part, defendants, The Cleveland & Pittsburgh Rail Road Company and the Pennsylvania Company offered in evidence certified copy of Lease from Hezekiah Camp et al. to Daniel P. Rhodes recorded in Vol. 49, page 579, a true copy of which is as follows, to wit:—

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Hezekiah Camp & Other-
to
Daniel P. Rhodes.

(Lease.)

This indenture made this 29th day of March 1851 between Hezekiah Camp Thomas S. Harbach, Harriet L. Harbach, Thomas Harbach by his Guardian- Thomas S. Harbach and Harriet L. Harbach & Maria Louise Harbach each by her guardian John I. Herrick of the first part and Daniel P. Rhodes of the second part. Whereas the said parties are the owners as tenants in common in the proportions hereinafter mentioned of the following described premises, to wit: situate in the City of Cleveland Cuyahoga County & State of Ohio & known and described as situate on the Bath Street tract so called & being 250 feet fronting on the Cuyahoga River & varying in depth from 150 to 300 feet to a projected street as platted on the map made by F. Harbach of the Bath Street property the said Rhodes being entitled as tenant in common of the equal undivided fourth part of said premises, the said Camp to the equal undivided fourth part & the legal representatives of Frederick Harbach of the equal undivided half of said premises and whereas it is agreed between the aforesaid tenants in common that in consideration of the said Rhodes leasing to his co-tenants his one quarter interest in all of the aforesaid premises excepting the parcel hereinafter described, to wit: situate in the City of Cleveland, Cuyahoga County, Ohio & is a part of the Bath Street tract so called & is described as follows beginning upon the water edge of the east pier of Cleveland Harbor at a point 352 feet from the south line of Bath Street measuring with said water edge of said pier the bearing of which is N. 30° W. then N. 66° E. parallel with Bath Street south line 242 10/12 feet to the periphery of a circle the radius of which is 650 feet, thence along the periphery of said circle westerly to a point 62 2/12 feet distant from the line described as running
538 parallel with Bath Street south line which is equidistant to 62 1/2 feet parallel with said pier; thence S. 66° west 202 1/2 feet to the waters' edge of said pier thence south 30° east along said water edge of said pier 62 1/2 feet to the place of beginning reserving the right of way between said edge of said pier & a line parallel therewith & 25 feet therefrom measuring on a course 66° East, the aforesaid parties of the first part have let and leased to the said party of the second part all their right, title & interest in the last above described premises for the term of twelve years from the 1st day of January, 1851. To have and to hold unto the said second party his executors, administrators & assigns all the right, title and interest of the said parties of the first part (being the undivided three fourths part thereof) in the said last described premises free of rent from the 1st day of January 1851 until the 1st day of January, 1863, and it is hereby agreed by and between all the parties hereto that all the buildings and improvements erected or made upon the leased premises aforesaid during the term hereby leased shall at the

expiration of the term hereby leased be appraised by three disinterested individuals, one to be selected by each of the parties hereto & the other by the persons so selected & the said party of the first part shall account with the said party of the second part for three fourths of such appraised value of said improvements either by paying the said party of the second part therefore in case the property shall remain common or in case a partition shall then be made of said property by taking the same into consideration in said partition and the said party of the first part hereby covenants with the said party of the second — that the said party of the second part shall use & occupy the premises hereby leased for and during the term aforesaid free and clear of all claim & demand of the said party of the first part their heirs assigns & legal representatives it being understood that nothing contained in this instrument shall be considered as any evidence of the title whatever as between the several parties of the first part but all questions and matter relating to the interest of the said several parties of the first part in said premises shall remain open & undetermined as fully as if this instrument had not been made. In witness whereof we have hereunto set our hands and seals this first day of April A. D. 1851.

HEZEKIAH CAMP, [SEAL.]

THOMAS S. HARBACH, [SEAL.]

HARRIET L. HARBACH, [SEAL.]

By Her Attorney, HORACE FOOTE,

539

HARRIET L. HARBACH, [SEAL.]

As Guardian of Thomas Harbach,

By Her Attorney, HORACE FOOTE,

THOMAS S. HARBACH, [SEAL.]

As Guardian of Thomas Harbach,

JOHN I. HERRICK, [SEAL.]

As Guardian of Maria Louisa Harbach,

By HORACE FOOTE, [SEAL.]

His Attorney,

DANIEL P. RHODES, [SEAL.]

Signed and sealed in presence of

MOSES KELLY,

JAMES WADE, JR.

THE STATE OF OHIO,

Cuyahoga County, ss:

CLEVELAND, April 1, A. D. 1851.

Before me James Wade Jr. a Notary Public in and for said County personally appeared the above named Hezekiah Camp, Thomas S. Harbach and Daniel P. Rhodes and acknowledged the signing and sealing of the foregoing instrument to be their free act and deed. Also appeared the above named Harriet L. Harbach by her attorney in fact Horace Foote and acknowledged the signing and sealing of the foregoing instrument to be the voluntary act and deed of the said Horace Foote as said attorney; also appeared the above named

Harriet L. Harbach as guardian of Thomas Harbach above named by her attorney in fact above named Horace Foote and acknowledged the signing and sealing of the foregoing instrument to be her voluntary act and deed as guardian of Thomas Harbach and the voluntary act and deed of the said Horace Foote as said attorney. Also appeared the above named Thomas S. Harbach and acknowledged the signing and sealing of the foregoing instrument to be his free act and deed as guardian of the said Thomas Harbach. Also appeared the above named John L. Herrick guardian of Maria Louisa Harbach by his attorney in fact above named Horace Foote and acknowledged the signing and sealing of the foregoing instrument to be his free and voluntary act and deed as guardian of the said Maria Louisa Harbach and the voluntary act and deed of the said Horace Foote as said attorney. In witness whereof I have hereunto signed my name and hereto affixed my seal of office this 1st day of April A. D. 1851.

JAMES WADE, JR., [SEAL.]
Notary Public.

THE STATE OF OHIO,
Cuyahoga County, ss:

I, J. C. Siegrist County Recorder of the County of Cuyahoga aforesaid, in whose custody the land records of said county
540 are required by the laws of the state of Ohio, to be kept, do hereby certify that the foregoing copy is taken and copied from the records of said county, as appears on page 579 in Vol. 2 of Mortgages, and that said foregoing copy has been compared by me with said original record, and that the same is a correct transcript thereof.

In testimony whereof, I have hereunto subscribed my name and affixed my seal of office, at the Court House, in the City of Cleveland, this 30th day of Jan. 1899.

[SEAL.]

J. C. SIEGRIST,
County Recorder.

By MAURICE MASCHKE,
Deputy Recorder.

(Rev. Stamp 10c.)

Certified copy of record of Lease from Hezekiah Camp et al. to Daniel P. Rhodes. Original received for record April 5, 1851 at — o'clock — M. Recorded April 9, 1851, in Volume 49, page 579. Cuyahoga County Records.

JOHN PACKARD,
Dep. Recorder.

And further to maintain the issues on their part, defendants The Cleveland & Pittsburgh Railroad Company and the Pennsylvania Company, offered in evidence certified copy of Lease from Daniel P. Rhodes to Charles L. Rhodes, and assignment of same to The Cleveland & Pittsburgh Railroad Company. A true copy thereof is as follows, to-wit:

This Indenture of Lease made the first day of April in the year 1851, by and between Daniel P. Rhodes of Ohio City, Cuyahoga County, Ohio, of the first part & Charles L. Rhodes of the second part.

Witnesseth: That the first party has let and leased and does hereby let and lease unto the second party the following premises situate in the County of Cuyahoga & State of Ohio & in the City of Cleveland & described as follows, to-wit: being a part of Bath Street tract, so called, and being upon the water edge of the east pier of Cleveland Harbor at a point 352 feet from the South line of Bath Street (measuring with said water edge of S. pier the bearing of which is N. 30° W.) then N. 66° East parallel with Bath Street South line 242 10-12 feet to the periphery of a circle, the radius of which is 650 feet, thence along the periphery of said circle westerly to a point 62 2-12 feet distant from the line described as running parallel with Bath Street South line, which is equivalent to 62 $\frac{1}{2}$ feet parallel with said pier, thence S. 66° W. 202 $\frac{1}{2}$ feet to the water edge of said pier, thence south 30° E. along said water edge of said pier 62 $\frac{1}{2}$ feet to the place of beginning. Re-

541 serving the right of way between said edge of S. pier & a line parallel therewith and 25 feet therefrom measuring on a course N. 66° East also reserving therefrom on the northerly side thereof a strip of land from front to rear 12 $\frac{1}{2}$ feet in width at & for the rents and upon the conditions hereinafter specified. To have & to hold the leased & demised premises aforesaid upon the terms and conditions hereinafter specified from the 1st day of April 1851 until the 1st day of April 1856 to the second party & to the executors and administrators of the second party. And the second party does hereby agree to pay the sum of \$1,600 rent per year, during the continuance of this lease, & to be paid by the second party at the expiration of each and every quarter from the commencement of the term of this lease. And it is mutually covenanted between the parties aforesaid, that the aforesaid demised premises shall be used & occupied in a careful, safe and proper manner by the second party. That the premises aforesaid or any part thereof shall not be underlet or this lease assigned, without the consent in writing of the first party, under pain of forfeiting the residue of the term hereby granted, at the election of the first party. That the second party will deliver up and surrender to the first party the possession of the premises hereby leased at the expiration of the term aforesaid, in as good repair as the same shall be in at the commencement of said term, the natural wear and decay only excepted. That if the rent aforesaid shall at any time be in arrear & unpaid the first party may avoid this Lease, & enter into possession of the demised premises, & sue for & recover all the rents due at the rate aforesaid, up to the time of such entry. That if any waste be committed upon, or unnecessary damage be done to the demised premises, the first party may for that cause enter upon the same & avoid this Lease, & bring his action for such waste or damage, or he may bring his action & recover for such damage, without avoiding said Lease, at his election. That the party of the

second part at the expiration of this lease shall have the privilege of renewing the same for the further term of six years at such a rent per annum payable quarterly as three distinctive individuals, one to be chosen by each of the parties hereto, the third by the two thus chosen—shall decide to be fair, reasonable—That the party of the first part at the expiration of this lease, or in case of renewal, at the expiration of such renewed lease shall take and pay the party of the second part for all the buildings & fixtures which the party of the second part shall erect and place upon the aforesaid demised premises & then remain thereon—at such price as the parties hereto shall agree or in case of disagreement at the cash appraisal

542 of three disinterested individuals—one to be selected by each of the parties hereto & the third by the two so selected.

That the first party will warrant and defend the second party in the enjoyment and peaceable possession of the above demised premises, during the term aforesaid if the second party shall perform all the covenants herein contained, on the part of the second party to be performed.

In witness whereof—The parties have set their hands & seals to duplicates being the date above written.

DAN'L P. RHODES. [SEAL.]
CHAS. L. RHODES. [SEAL.]

Signed, sealed and delivered in presence of—

MOSES KELLY.

THE STATE OF OHIO,

Cuyahoga County, ss:

Personally came Daniel P. Rhodes and Charles L. Rhodes, signers and sealers of the foregoing instrument, and acknowledged the same to be their free act and deed. Before me,

M. DIETSE,
Notary Public.

Cleveland, April 4th, 1851.

In consideration of the sum of thirteen thousand dollars received to my full satisfaction of the Cleveland & Pittsburgh Rail Road Company I hereby assign and transfer to said Company all my right, title to or interest in the within lease and also sell and deliver to said company the building lately erected by me on said premises.

CHAS. L. RHODES. [SEAL.]

Cleveland, June 30th, 1851.

CLEVELAND, *May 3, 1851.*

Rec. from Chas. L. Rhodes Eight hundred dollars in full for rent due on the within to Oct. 1, 1851.

DAN'L P. RHODES.

(Endorsed.)

DB 388 Dan'l P. Rhodes To Chas. L. Rhodes Lease Assigned to C. & P. R. R. Co. No. 5.

And further to maintain the issues on their part, defendants The Cleveland & Pittsburgh Railroad Company and the Pennsylvania Company, offered in evidence certified copy of Quit Claim Deed from Hezekiah Camp and wife to Daniel P. Rhodes, recorded in Vol. 50, page 297, Cuyahoga County Records, a true copy of which is as follows, to-wit:

Hezekiah Camp & Wife to Daniel P. Rhodes,

Know all men by these presents that we Hezekiah Camp and Abigail Camp wife of the said Hezekiah of Cleveland, Ohio, 543 for divers good causes and considerations thereunto moving especially for nine thousand five hundred dollars received to our full satisfaction of Daniel P. Rhodes, have given granted remised released and forever quit claimed, and do by these presents absolutely give grant remise release and forever quit claim unto the said Daniel P. Rhodes and to his heirs and assigns forever all such right and title as we the said Hezekiah Camp and Abigail Camp have or ought to have in or to the equal undivided fourth part in common following described land situate in the City of Cleveland, township number eight in range twelve in the Connecticut Western Reserve in the State of Ohio and Cuyahoga County. All that piece or parcel of land bounded westwardly by the Stone Pier so called, southwardly by a line drawn parallel with the south line of Bath Street and two hundred and eighty-two feet northwardly measuring at right angles therefrom and by the northerly line of that part of Bath Street which is to extend northerly along the Pier as above described, northerly by a line drawn parallel with the South line of Bath Street and five hundred and thirty-two feet measuring at right angles therefrom and eastwardly by a line to be drawn parallel with the Rail Road tracks which may be laid from Bath Street or near the same towards the northerly end of the Stone Pier so as to leave a space thirty feet in breadth between the westerly track and the line so drawn as an open carriage way. To have and to hold the undivided fourth part of the premises aforesaid unto him the said Daniel P. Rhodes his heirs and assigns to the only use and behoof of the said Rhodes his heirs and assigns forever. So that neither we the said Hezekiah Camp and Abigail Camp nor our heirs, nor any other person or persons claiming title through or under us shall or will hereafter claim or demand any right or title to the said undivided fourth part of the premises or any part thereof but they and every one of them shall by these presents be excluded and forever barred and the said Hezekiah Camp hereby covenants with the said Rhodes his heirs and assigns that he has not in any way conveyed or encumbered his title to the said premises and that the said interest in said premises hereby conveyed to said Rhodes is

the same interest in the said premises which was conveyed to said Camp by Charles Whittlesey by deed dated March 24, 1851, excepting so far as the same may be encumbered by the contract entered into between the Cleveland, Columbus and Cincinnati Rail Road Company and Camp and Lloyd August 8th, 1849. And I the said Abigail Camp do hereby remise release and forever quit claim unto the said Daniel P. Rhodes his heirs and assigns all my right 544 and title of dower in the above described premises.

In witness whereof we have hereunto set our hands and seals the first day of April in the year of our Lord one thousand eight hundred and fifty-one.

HEZEKIAH CAMP. [SEAL.]
ABIGAIL CAMP. [SEAL.]

Signed, sealed and delivered in presence of

JOHN RANKINE, JR.
L. RITTER.

THE STATE OF OHIO,
Cuyahoga County, ss:

Personally appeared Hezekiah Camp and Abigail Camp who acknowledged that they did sign and seal the foregoing instrument and that the same is their free act and deed. I further certify that I did examine the said Abigail Camp separate and apart from her said husband and did then and there make known to her the contents of the foregoing instrument and upon that examination she declared that she did voluntarily sign, seal and acknowledge the same and that she was still satisfied therewith. Before me

JOHN RANKIN, JR., [SEAL.]
Notary Public.

Received April 5th, 1851.
Recorded April 14, 1851.

CHARLES WINSLOW, *Recorder.*

THE STATE OF OHIO,
Cuyahoga County, ss:

I, Fred Saal, County Recorder of the County of Cuyahoga aforesaid, in whose custody the land records of said county are required by the laws of the State of Ohio, to be kept, do hereby certify that the foregoing copy is taken and copied from the records of said county, as appears on page 297 in Vol. 50 of Deeds, and that said foregoing copy has been compared by me with said original record, and that the same is a correct transcript thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed my seal of office, at the Court House in the City of Cleveland, this 10th day of Jan. 1898.

[SEAL.]

FRED SAAL, *Recorder,*
By J. C. SIEGRIST,
Deputy Recorder.

I, Walter C. Ong, Presiding Judge of the Court of Common Pleas, within and for the Fourth Judicial District of the State of Ohio, in which District is said County of Cuyahoga, do hereby certify that Fred Saal, was at the date of the above certificate, County Recorder, within and for said Cuyahoga County, and State of Ohio, and that said County Recorder is the officer in whose custody said
 545 Land Records are required to be kept by the laws of the State of Ohio, and authorized by the laws of the State of Ohio, to certify as aforesaid, and that said attestation to said copy of said record is in due form of law.

Signed by me, and dated at Cleveland, Cuyahoga County, Ohio, this 4th day of Jan'y, A. D. 1899.

WALTER C. ONG,
Judge as Aforesaid.

(Endorsed.)

Certified Copy of Record of Quit Claim Deed from Hezekiah Camp & wife to Daniel P. Rhodes. Original received for record April 5, 1851 at — o'clock — M. Recorded April 14th, 1841 in Volume 50, page 297 Cuyahoga County Records. Charles Winslow, Recorder.

And further to maintain the issues on their part, defendants The Cleveland & Pittsburgh Railroad Company and the Pennsylvania Company, offered in evidence Contract between Hezekiah Camp and The Cleveland & Pittsburgh Railroad Company dated April 11, 1851, a true copy of which is as follows, to-wit:

Whereas, The Cleveland & Pittsburgh Railroad Company by order of their Board of Directors previously made on the tenth day of April, A. D. 1851, filed in the Clerk's office of the Superior Court of Cleveland, an act of appropriation, appropriating the following described lands and premises, situated in the City of Cleveland, County of Cuyahoga, and State of Ohio, known as part of Bath Street tract, so-called, and bounded as follows, to-wit:

Beginning upon the water edge of the East Pier of Cleveland Harbor, at a point two hundred and eighty-two (282) feet from the south line of Bath Street, measuring with said Water edge of said Pier, the bearing of which is N. 30° W., thence north 66° east parallel with said south line of Bath Street three hundred feet to the periphery of a circle, the radius of which is six hundred and fifty feet convexing towards the Cuyahoga River, thence along the periphery of said circle to a point N. 66° E. and one hundred and fifty feet north of the water edge of said Pier, thence westerly on a line parallel with the south line of Bath Street one hundred and fifty (150) feet to the water edge of said pier, and thence along the water edge of said pier southerly two hundred and fifty feet to the place of beginning; for the purpose of building their Railroad necessary side tracks, water tanks, and depots thereof; and

Whereas, said Company propose and intend to appropriate
 546 for the same purposes all that piece or parcel of land situated in said City of Cleveland, now covered with water, bounded

southwardly from a point on the west line of Water Street five hundred and fifty feet from the south line of Bath Street to the center line of Spring Street produced, and at right angles with the lines of said street, northwestwardly by Lake Erie, extending into the same indefinitely between the westerly line of Water Street produced and the center line of Spring Street produced by the westerly line of Water street and westerly by the center line of Spring Street produced; and

Whereas, Hezekiah Camp, of the City of Cleveland, is equitably interested in and entitled to one equal undivided fourth part of the premises first above described; and has the legal and equitable title to one equal undivided fourth part and is interested in, and equitably entitled to one further equal undivided fourth part of the premises secondly above described; and also

Whereas, by virtue of an agreement between William B. Lloyd and said Camp of the one part, and The Cleveland, Columbus & Cincinnati Railroad Company of the second part, made the eighth day of August, A. D. 1849, it was stipulated and agreed between said parties, that all that portion of the Bath Street Tract, so-called, falling within the lines of Spring Street extended northwardly when (*)

(*) NOTE.—Connecting words lost—Agreement considerably worn through and defaced by age.

is to be kept open as an avenue or passage-way between Bath Street and the premises secondly above described, and to any Pier that may thereafter be erected by either or both of said parties extending along or near the course of Spring Street into Lake Erie; and

Whereas, also by the terms of said agreement said second party further stipulated and agreed to, and with said Lloyd and Camp, to drive within two years from the date thereof, a *sub*stantial double row of piles from Stockley's Pier at a point two hundred feet north of the southerly line of the premises secondly above described, westwardly to the center line of Spring Street produced, thence southwardly along said center line to the south line of the premises secondly above described, suitable for protecting the same, when filled up, from abrasure of the waves.

Now, therefore, be it known, that said Cleveland and Pittsburgh Railroad Company, of the first part, and said Hezekiah Camp of the second part, have this eleventh day of April, A. D. 1851, made, and entered into the following agreement:

Said Camp in consideration of the stipulations hereinafter mentioned to be performed by said Company, hereby agrees to
 547 release and discharge said Company from any award or awards which may hereafter be made by any Committee appointed or to be appointed by any court in consequence of any appropriation made, or which may hereafter be made by said Company, for the value of, or damage done to the premises above described or any portion of the same, so far as said Company may be interested in the same.

Said Camp is also to execute and deliver to said Company a Quit Claim Deed with a release therein of his wife's right of dower and

covenants against his or her acts, of the one equal undivided fourth part of the premises secondly above described, and also to assign and transfer to said Company, all right title to, interest in, immunities or privileges which the said Camp has in any portion of the Bath Street Tract so called, described as follows: situate in said City of Cleveland, and bounded on the east by Water Street extended, on the west by the East Pier of Cleveland Harbor, on the south by a line extending from Water Street to said Pier parallel to and one hundred and thirty-two feet north of said South line to Bath Street, and on the north by the Canadian Line, (excepting a strip bounded as follows, beginning at a point on the water edge of said Pier, one hundred and thirty-two feet north of said south line of Bath street, thence northerly along said Pier one hundred and fifty feet, thence easterly one hundred feet, thence southerly on a line parallel with said Pier one hundred and fifty feet, and thence westerly parallel with the south line of Bath Street one hundred feet to the place of beginning), together with any and all interest resulting or which may hereafter result, to said Camp from and by virtue of any contract or contracts now existing or heretofore made in reference to any portion of the premises last above described, (except as to the last exception), said Camp hereby reserves to himself all rights of action against any person or persons, bodies politic or corporate, for the use and occupation heretofore of any portion of Bath Street Tract so called.

In consideration of the performance of the stipulations above mentioned to be performed by said Camp, said Cleveland and Pittsburgh Railroad Company hereby agrees to pay him the sum of eleven thousand dollars, as follows:

Three thousand dollars in full paid stock of said Company with C. Prentiss' guaranty for six per cent. per annum, and Prentiss' agreement to take the same at par at the expiration of said period; one thousand dollars cash in hand; one thousand dollars in one year with interest; fifteen hundred dollars in two years with annual interest; fifteen hundred dollars in three years with annual interest; fifteen hundred dollars in four years with annual interest; and fifteen hundred dollars in five years with annual interest. Said payments to be made guaranteed by C. Prentiss and Zalmon Fitch or some other responsible person in place of said Fitch.

(Signed)

H. CAMP.

CYRUS PRENTISS, *President*.

I hereby certify that I have this 6th day of March, 1899 compared the above copy with the original instrument and find the above to be a true copy of said original instrument.

CHARLES T. BROOKS.

(Endorsed:) Contract. Hezekiah Camp vs. C. & P. R. R. Co. 4-11-1851.

And further to maintain the issues on their part, all the defendants offered in evidence the testimony of THEODORE S. LINDSEY, as follows:

By Mr. CLARKE:

Q. What is your name?

A. Theodore S. Lindsey.

Q. You reside in the City of Cleveland, do you?

A. Yes, sir.

Q. And how long have you lived there?

A. Forty-five years.

Q. And in the employ of what railroad company were you in the years 1860 to 1870?

A. Cleveland & Toledo, before the consolidation.

Q. And what railroad before that—before 1860?

A. The Cleveland and Toledo, before the consolidation.

Q. Before 1860, were you?

A. Yes, sir.

Q. And were you familiar in those years 1860 and before, with the method of operation of the Cleveland, Painesville & Ashtabula Road?

A. Yes, sir, I was.

Q. And with its property here in the city?

A. Yes, sir.

Q. You may state under what name the division of the Cleveland, Painesville & Ashtabula road, from the river or from Cleveland to Erie, was operated?

A. It was operated as the Cleveland, Painesville & Ashtabula—

C. P. & A. were the initials.

Q. What division was it called?

A. The Cleveland & Erie.

Q. Recalling now the old passenger station, I mean the one that was out on the piles, and has since disappeared, and the
549 round-house just north of Front street, which appear to have been marked upon the map here "C. & E."—were those the property of the Cleveland, Painesville & Ashtabula road?

A. Yes, sir.

Q. That was then a designation simply of the division?

A. That was all.

And further to maintain the issues on their part, defendants The Cleveland and Pittsburgh Railroad Company and the Pennsylvania Company, offered in evidence Certified Copy of Record in the case of Lessee of City of Cleveland vs. William B. Lloyd et al., Supreme Court, Record L, page 456, a true copy of which, omitting said bill of exceptions, is as follows, to-wit:

Supreme Court, Record L, Page 456, July Term, 1861.

STATE OF OHIO,
Cuyahoga County, ss:

CITY OF CLEVELAND
vs.
LESSEE OF WM. B. LLOYD et al.

In Error.

Be It Remembered that on the 13th day of June, A. D. 1848, came the said city, being plaintiff in error, by its attorney, and duly sued out of the Supreme Court of said county the following writ of error, to-wit:

STATE OF OHIO,
Cuyahoga County, ss:

[SEAL.]

Writ of Error.

To the Judges of the Court of Common Pleas within and for said County, Greeting:

Because in the record and proceedings and also in the rendition of judgment in a certain action of ejectment which was lately in our said court before you, wherein the lessee of William B. Lloyd, Ellery G. Williams as Commissioner of Insolvents, Caroline Lloyd, Rosella M. Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John H. Lloyd, Jane E. Hayden, Caroline Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, plaintiffs, and the City of Cleveland, defendant, error has intervened as it is said to the damage of said City of Cleveland, and we being willing that such error, if any there be, should be corrected and full and speedy justice done to the parties aforesaid, in their behalf do command you that if judgment be thereupon given then without delay you send to us distinctly and openly under the seal of your court an authenticated transcript of the
550 record and proceedings aforesaid with all things concerning the same and this writ, so that the same being respected we may at the term of our Supreme Court to be holden within and for said County of Cuyahoga on the 14th day of August next cause further to be done thereupon what of right and according to the laws of the land ought to be done.

Witness, Aaron Clark, Clerk of the Supreme Court of the State of Ohio, in and for said county, this 13th day of June, A. D. 1848.

AA. CLARK, *Clerk.*

Also at the same date aforesaid was issued the following supersedeas, citation and notice, to-wit:

STATE OF OHIO,
Cuyahoga County, ss:

[SEAL.]

To the Sheriff of said County, Greeting:

We command you that you forbear all further proceedings upon a judgment rendered in a certain action of ejectment in our Court of Common Pleas in and for said County of Cuyahoga at the March term thereof, A. D. 1848, in favor of the lessee of William B. Lloyd, Ellery G. Williams as Commissioner of Insolvents, Caroline Lloyd, Rosella M. Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John H. Lloyd, Jane E. Hayden, Caroline Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden against the City of Cleveland, his term yet to come, in the premises described in the declaration and for the sum of fifty-nine and seventy-four hundredths dollars (\$59.74), and which said judgment for cause of error to be corrected on the complaint of the said City of Cleveland we have caused to be brought into our Supreme Court by our writ of error, and also that you give notice to the said lessee of William B. Lloyd and other lessors above named that a writ of error has been allowed upon said judgment and also that you cite the said lessee of William B. Lloyd and the other lessors named above to appear before the judges of our Supreme Court at the court house in said county on the first day of the next term of the said Supreme Court to show cause, if there be, why speedy justice shall not be done to the parties in their behalf, and this do or you will answer the contrary at your peril.

Witness, Aaron Clark, Clerk of the Supreme Court of Ohio in and for said County, this 13th day of June, A. D. 1848.

AA. CLARK, *Clerk*.

And afterwards at the next term of said Supreme Court, begun and held at the Court House in Cleveland, on the 14th day of August, A. D. 1848, came the sheriff of said county and returned said supersedeas, citation and notice with his service endorsed
551 thereon, as follows, to-wit: "Served this writ on defendants by delivering to defendants' attorneys, Hitchcock, Wilson & Wade, a copy of the same. Fees, seventy-five cents. H. Beebe, Sheriff, by E. S. Root, Dep."

Also at the term of the Supreme Court aforesaid was returned the aforesaid writ of error together with the original files and pleadings and transcript of journal entries made in said cause in the Court of Common Pleas and bill of exceptions, as follows, to-wit:

LESSEE OF WILLIAM B. LLOYD et al.

vs.

CITY OF CLEVELAND.

Ejectment.

Be it remembered that at a term of the Court of Common Pleas begun and held at the Court House in Cleveland on the 18th day

of February, A. D. 1846, came the Sheriff of said county and returned into court the following declaration in ejectment with his service of the same endorsed thereon, to-wit:

STATE OF OHIO,
Cuyahoga County, ss:

Court of Common Pleas. Vacation after November Term, A. D.
1845.

STATE OF OHIO,
Cuyahoga County, ss:

Richard Roe was attached to answer John Doe of a plea whereof he, the said Richard Roe, with force and arms, etc., entered into a parcel of land situated in the City of Cleveland and County aforesaid abutting southerly on a 14 foot alley and running from the east pier of the harbor as described and marked on a plan and return of Ahaz Merchant to the Common Council of said City of Cleveland dated February 4th, 1845, said parcel being 25 feet front on the pier and 120 feet deep to a street as laid down on said plat which William B. Lloyd, Ellery G. Williams as Commissioner of Insolvents, Caroline Lloyd, Rosella M. Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John H. Lloyd, Jane E. Hayden, Caroline Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden had demised to the said John Doe for a term which is not yet expired and ejected him from his said farm, and other wrongs to the said John Doe then and there did to the great damage of the said John Doe and against the peace of the State of Ohio, etc. And thereupon the said John Doe, by Payne, Wilson and Wade, and Foote and Whittlesey, his attorneys, complains that,

Whereas, the said William B. Lloyd, Ellery G. Lloyd,
552 Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail
Lloyd, John Henry Lloyd, Jane E. Lloyd, Mary Lloyd,
Caroline Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden,
Sarah Hayden, Thomas L. Hayden, on the second day of January
in the year of our Lord 1845, at Cleveland aforesaid, in the county
aforesaid, had demised the said tenements with the appurtenances
to the said John Doe, to have and to hold the same to the said John
Doe and his assigns from the first day of January aforesaid in the
year aforesaid for and during and unto the full end and term of ten
years from thence next issuing and fully to be completed and ended.
By virtue of which said demise the said John Doe entered into the
said tenements with the appurtenances and became and was thereof
possessed for the said term so to him thereof granted as aforesaid.
And the said John Doe being so thereof possessed the said Richard
Roe afterwards, to-wit: on the 3rd day of January aforesaid in the
year afterward with force and arms, to-wit: with guns and bills and
swords and staves entered into the said tenements with the appurte-
nances in which the said John Doe was so interested and of which
he was so possessed in the manner and for the term aforesaid, which

is not yet expired, and ejected him, the said John Doe out of his said farm and still keeps thereout the said John Doe so ejected as aforesaid, and other wrongs to the said John Doe then and there did to the great damage of said John Doe and against the peace of the State of Ohio, whereof the said John Doe saith that he is injured and hath sustained damage to the value of five hundred dollars and therefore he brings his suit, etc.

PAYNE, WILSON & WADE, AND
FOOTE & WHITTLESEY,

Plaintiff's Attorneys.

John Denn and Richard Fenn, Pledges to Prosecute.

Notice.

Mr. Hezekiah Camp.

SIR: I am informed that you are in possession of or claim title to the premises in this declaration of ejectment mentioned or to some part thereof, and I, being sued in this action as a casual ejector only and having no claim or title to the same do advise you to appear on the first day of the ensuing term in the Court of Common Pleas to be holden at Cleveland within and for said County of Cuyahoga on the 18th day of February, A. D. 1846, by some attorney of that court, and then and there by rule of the same court to cause yourself to be made defendant in my stead; otherwise I shall
553 suffer judgment therein to be entered against me by default and you will be turned out of possession.

Dated this 6th day of February, A. D. 1846.

Your loving friend,

RICHARD ROE.

The Sheriff's return is as follows, to-wit:

Sheriff's Return.

STATE OF OHIO,

Cuyahoga County, ss:

CLEVELAND, February 7th, 1846.

I this day served this writ on Hezekiah Camp, tenant in possession of the premises in the within declaration mentioned or of part thereof, by delivering a true copy of the within declaration and notice to the wife of Hezekiah Camp, he being absent, and at the same time acquainted her with the intent and meaning of the said declaration and notice.

H. BEEBE, *Sheriff.*

Fees \$1.05.

And afterwards, to-wit, on the 4th day of March, 1846, came the said City of Cleveland by its attorney and entered into the common consent rule and is made party defendant to this suit, which consent rule is as follows, to-wit:

John Doe ex dem, William B. Lloyd, Ellery G. Williams as Commissioner of Insolvents, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Jane E. Hayden, Mary Hayden, Caroline Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden vs. City of Cleveland. Court of Common Pleas of Cuyahoga County, Ohio, February Term, 1846.

And the said City of Cleveland comes and confesses the lease, entry and ouster in the said declaration mentioned and admits itself to be in possession of a parcel of land situated in the City of Cleveland and abutting southerly on a 14 foot alley running from the Eastern Pier of the Harbor as described and marked on a plan and return of Abaz Merchant dated February 4, 1845, to the Common Council of said city, said parcel being twenty-five feet front on the pier and one hundred and twenty (120) feet to a street as laid down on said plat and being parcel of the premises in the said declaration mentioned and for plea says that it is not guilty of the trespass and ejectment in the said declaration alleged against it, and of this it puts itself upon the country, and the said John Doe doth the like.

By G. W. LYNDE,
City Attorney.

And thereupon the cause is continued.

554 And afterwards at the next term of said Court of Common Pleas, begun and held at the Court House in Cleveland on the 12th day of May, A. D. 1846, this cause was continued.

And afterwards at the next term of said Court of Common Pleas begun and held at the Court House in Cleveland on the 3rd day of November, A. D. 1846, this cause was continued.

And afterwards at the next term of said Court of Common Pleas begun and held at the Court House in Cleveland on the 17th day of February, A. D. 1847, this cause was continued on the defendants' motion and costs were taxed at \$8.27.

And afterwards at the next term of said Court of Common Pleas begun and held at the Court House in Cleveland on the 11th day of May, 1847, this cause was continued on the defendants' motion and costs.

And afterwards at the next term of said *County* of Common Pleas begun and held at the Court House in Cleveland on the 2nd day of November, A. D. 1847, on motion the plaintiffs had leave to amend, on payment of costs since filing the defective paper, and costs to be paid 12 days before the next term or become non-suit, and cause continued.

And afterwards, to-wit, on the 17th day of January, A. D. 1848, came the said plaintiffs by their attorneys and filed in said Court of Common Pleas their Amended Declaration as follows, to-wit:

Court of Common Pleas.

STATE OF OHIO,

Cuyahoga County, ss:

Richard Roe was attached to answer John Doe of a plea wherefor he, the said Richard Roe, with force and arms, entered into a parcel of land situated in the City of Cleveland and county aforesaid, abutting Southerly on a 14 foot alley running from the Eastern Pier to the Harbor as described and marked in a plan and return of Abaz Merchant to the Common Council of said city, dated February 4, 1845, said parcel being twenty-five (25) feet front on the Pier and one hundred and twenty (120) feet deep to a street as laid down in said plat with the appurtenances situate in Cleveland aforesaid, which William B. Lloyd, Ellery G. Williams as Commissioner of Insolvents, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Jane E. Hayden, Caroline Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden had demised to the

555 said John Doe for a term which has not yet expired. And also wherefor the said Richard Roe, with force and arms, entered into a certain other parcel of land situate in said City of Cleveland and county aforesaid bounded Southerly by an alley 14 feet wide extending from the East Pier of the Harbor as laid down in a plat and survey returned by Abaz Merchant to the Common Council of said city under date of February 4th, 1845, and northerly by a line parallel with the southerly line and twenty-five (25) feet distant therefrom and extending back one hundred and twenty (120) feet from said pier to a street laid out on said plat, with the appurtenances, situate in Cleveland aforesaid, which William B. Lloyd, John W. Allen, Assignee in Bankruptcy of Albert M. Lloyd, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Caroline Hayden, Mary Hayden, Jane E. Hayden, Rosella Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, had demised to the said John Doe for a term which has not yet expired; and also wherefor he, the said Richard Roe, with force and arms, entered into a certain other parcel of land situate in said City of Cleveland and County aforesaid and described and known as twenty-five (25) feet front on the East Pier of the Harbor and as one hundred and twenty (120) feet deep, bounded Southerly by an alley 14 feet *width* as laid down on said Merchant's plat and survey, and Easterly by a street laid out on said plat, with the appurtenances, situate in the City of Cleveland aforesaid, which William B. Lloyd, Albert M. Lloyd, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Caroline Hayden, Mary Hayden, Jane E. Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden had demised to the said John Doe for a term which is not yet expired and ejected him from his said several farms, and other wrongs to the said John Doe then and there did to the great damage of the said John Doe, and against the peace of the State of Ohio, etc.

And thereupon the said John Doe by Hitchcock, Wilson and Wade, his attorneys, complains that whereas the said William B. Lloyd, Ellery G. Williams as Commissioner of Insolvents, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Caroline Hayden, Mary Hayden, Jane E. Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, on the 2nd day of January A. D. 1845, at Cleveland aforesaid, in the county aforesaid had demised the lands and tenements first above mentioned, with the appurtenances, to the said John Doe, to have and to hold the same to the said
556 John Doe and his assigns from the first day of January aforesaid in the year aforesaid for and during and unto the full end and term of ten years from thence next ensuing, and fully to be completed and ended. And also that whereas the said William B. Lloyd, John W. Allen as Assignee in Bankruptcy of Albert M. Lloyd, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Caroline Hayden, Mary Hayden, Jane E. Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, on the 2nd day of January, A. D. 1845, at Cleveland aforesaid in the county aforesaid had demised (to the said lands and tenements severally above described with the appurtenances to the said John Doe to have and to hold the same to the said John Doe and his assigns, from the first day of January aforesaid, in the year aforesaid, for and during and unto the full end and term of ten years from thence next ensuing, and fully to be completed, and ended. And also that whereas the said William B. Lloyd, Albert M. Lloyd, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Jane E. Hayden, Mary Hayden, Caroline Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, on the second day of January, A. D. 1845, at Cleveland aforesaid in said County of Cuyahoga, had demised the lands and tenements thirdly above mentioned, with appurtenances, to the said John Doe and his assigns from the first day of January aforesaid, in the year aforesaid for and during and unto the full end and term of ten years from thence next ensuing and fully to be completed and ended by virtue of which said several demises the said John Doe entered into the said several lands and tenements firstly, secondly and thirdly above described, with the appurtenances, and became and was thereof possessed for the said several terms so to him thereof respectively granted as aforesaid. And the said John Doe being so thereof possessed the said Richard Roe afterwards, to-wit, on the 3rd day of January aforesaid, in the year aforesaid, with force and arms, to-wit, with guns and bills and swords and staves entered into the said several lands and tenements firstly, secondly and thirdly above mentioned, with the appurtenances, in which the said John Doe was so interested and of which he was so possessed in manner and for the several terms aforesaid, which are not yet expired, and ejected him, the said John Doe, out of his said several farms and still keeps thereout the said John Doe so ejected as aforesaid, and other wrongs to the said John Doe then

and there did to the great damage of said John Doe, and against
the peace of the State of Ohio. Wherefore the said John
557 Doe saith that he is injured and hath sustained damage to
the value of five hundred dollars, and therefore he brings
his suit, etc.

HITCHCOCK, WILSON & WADE,
Plaintiffs' Att'ys.

John Denn and Richard Fenn pledges to prosecute.

Notice.

Mr. Hezekiah Camp.

SIR: I am informed that you are in possession of or claim title to the premises in this declaration of ejectment mentioned or to some part thereof, and I being sued in this action as casual ejector only and having no claim or title to the same, do advise you to appear on the first day of the ensuing term in the Court of Common Pleas to be holden at Cleveland within and for said County of Cuyahoga on the 18th day of February, A. D. 1846, by some attorney of that court and then and there by rule of the same court to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me by default and you will be turned out of possession.

Dated this 6th day of February, A. D. 1846.

Your loving friend,

RICHARD ROE.

And afterwards at the next term of said Court of Common Pleas begun and held at the Court House in Cleveland on the 7th day of March, A. D. 1848, came the said City of Cleveland, by its attorney and filed the following Consent Rule to-wit:

John Doe ex dem. of William B. Lloyd, Ellery G. Williams as Commissioner of Insolvents, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Jane E. Hayden, Caroline Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, and on (*Dm*) of same and John W. Allen as Assignee in Bankruptcy of Albert M. Lloyd.

And the City of Cleveland comes and confesses the lease, entry and ouster in the said declaration mentioned and admits itself to be in possession of the parcel of land in Cleveland City abutting southerly on a 14 foot alley running from the Eastern Pier of the Harbor as described and marked on a plan and return of Ahaz Merchant to the Common Council of said City dated February 4th, 1845, said parcel being 25 feet front on the Pier and 120 feet deep to a street as laid down on said plat and parcel of the premises in the said declaration mentioned, and for plea says that it is not
558 guilty of the trespass and ejectment in the said declaration
alleged against it, and of this it puts itself upon the country,
and the said John Doe doth the like.

SAMUEL WILLIAMSON,
Attorney for the City.

Whereupon at the March term of said Court of Common Pleas, A. D. 1848, before the Honorable Benjamin Bissell, President Judge, Asher M. Coe, Jos. Hayward and Thomas M. Kelly, Associate Judges, came the parties by their attorneys and are at issue, and thereupon a jury being called came, to-wit, James W. Day, Samuel Roberts, Thomas McIlrath, Nathan Lyon, Darius Ford, John Welsh, John Wilcox, Jr., John Beakell, Steven B. Meeker, H. N. Smith, Ezra Honeywell and W. W. Williams, who being impaneled and sworn do upon their oath say that the defendant is guilty of the trespass in ejectment in manner and form as the plaintiff have alleged against it, and they assess the plaintiff by reason of the premises to six cents. Therefore it is considered that the plaintiff recover of the defendant their term yet to come in the premises and also their damages and costs of suit.

THE STATE OF OHIO,
Cuyahoga County, ss:

I, Harry L. Vail, Clerk of the Court of Common Pleas within and for said County, and in whose custody the files, Journals and Records of said Court and the Supreme Court as provided for said County formerly are required by the laws of the State of Ohio to be kept, do hereby certify that the foregoing copy is taken and copied from the records L. page 456 of said Supreme Court of the proceedings of the said Supreme Court within and for said Cuyahoga County, and that said foregoing copy has been compared by me, with the original record, Supreme Court Record L., and that the same is a correct transcript thereof.

In Testimony Whereof, I do hereto subscribe my name officially, and affix the seal of said Court at the Court House in the City of Cleveland, in said County, this 18th day of August A. D. 1897.

[SEAL.]

HARRY L. VAIL, *Clerk.*

I, J. T. Logue, Presiding Judge of the Court of Common Pleas within and for the Fourth Judicial District of the State of Ohio, in which District is said County of Cuyahoga, do hereby certify that Harry L. Vail was at the date of the above certificate, and now is, Clerk of said Court of Common Pleas, within and for said Cuyahoga County, and State of Ohio, and that said Clerk is the officer in whose custody said original record, Record L. of the
559 Supreme Court is required to be kept by the laws of the State of Ohio, and authorized by the laws of the State of Ohio, to certify as aforesaid, and that said attestation to said copy of said record is in due form of law.

Signed By Me, and dated at Cleveland, Cuyahoga County, Ohio, this 18th day of August, A. D. 1897.

J. T. LOGUE,
Judge as Aforesaid.

And further to maintain the issues on their part the defendants, The Cleveland & Pittsburgh Railroad Company, and the Pennsylvania Company offered in evidence the Records of the Six Eject-

ment Suits, hereinafter set out, being the ejectment suits referred to in the answer of the City. (To which plaintiff objected on the same ground set up in the objection to the record in the case of Lessee of City of Cleveland vs. Lloyd, et al., heretofore offered. Same ruling; same exception by plaintiff.)

The following are true copies of said Records:

Enc. Doc. 17-121. Records 53-120.

THE STATE OF OHIO,

Cuyahoga County, ss:

LESSEE OF WM. B. LLOYD, ELLERY G. WILLIAMS, Com't Ins.;
Caroline, Rosetta, Delia A., Abigail P. & Jno. H. Lloyd, Jane
E., Mary, Caroline, Rosetta, Ann, Margaret, Sarah & Thomas
L. Hayden

VS.

THE CITY OF CLEVELAND.

Ejectment.

Be it remembered, that heretofore, to wit: at a term of the Court of Common Pleas, begun and held at the Court House, in the City of Cleveland, within and for said Cuyahoga County, and State of Ohio, on the eighteenth day of February, in the year of our Lord one thousand eight hundred and forty-six, by and before their Honors, Benjamin Bissel, President Judge, Asher M. Coe, Joseph Hayward and Thomas M. Kelley, Associate Judges of said Court, came the said plaintiffs by their attorneys and filed in said Court a certain ejectment against the said defendant, with Sheriff's service thereof indorsed, and which are as follows, to wit:

THE STATE OF OHIO,

Cuyahoga County, ss:

Vacation After November Term, A. D. 1845.

560

Declaration.

Richard Roe was attached to answer John Doe of a plea wherefore he the said Richard Roe, with force of arms, &c. entered into the following described lot of land, with the appurtenances, that is to say, lots number- one, two, three and four, of a certain survey or subdivision of land in the City of Cleveland, in said County, as surveyed by order of the City Council of the City of Cleveland, and certified and returned by Ahaz Merchant on the 4th day of February, A. D. 1845, with an allotment and plan on which said lots are designated by the numbers aforesaid, and are 20 feet on the Piers by 120 feet deep each, which William B. Lloyd, Ellery G. Williams as Commissioner of Insolvents, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Jane E. Hayden, Mary Hayden, Caroline Hayden, Rosella Hay-

den, Ann Haden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, *which* had demised to the said John Doe for a term which is not yet expired, and ejected him from his said farm; and other wrongs to the said John Doe then and there did, to the great damage of the said John Doe, and against the peace of the State of Ohio &c. And thereupon the said John Doe, by Payne, Wilson & Wade, Foote & Whittlesey, his attorneys, complains that whereas the said William B., Ellery G., Caroline Lloyd, Rosetta Lloyd, Delia Ann, Abigail P., John Henry, Jane E., Mary, Caroline Hayden, Rosella Hayden, Ann, Margaret, Sarah and Thomas L., on the second of January, in the year of our Lord eighteen hundred and forty-five, at Cleveland, Cuyahoga County aforesaid, had demised the said tenements with the appurtenances to the said John Doe, to have and to hold the same to the said John Doe and his assigns, from the first day of January aforesaid, in the year aforesaid, for and during and unto the full end and term of ten years from thence next ensuing, and fully to be completed and ended. By virtue of which said demise the said John Doe entered into the said tenements with the appurtenances and became and was thereof possessed for the said term so to him thereof granted as aforesaid. And the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the third day of January aforesaid, in the year aforesaid, with force of arms, to wit, with guns and bills and swords and staves, entered into the said tenements with the appurtenances in which the said John Doe was so interested,

561 and of which he was so possessed, in manner and for the term aforesaid, which is not yet expired, and ejected him, the said John Doe out of his said farm and still keeps there out the said John Doe so ejected as aforesaid and other wrongs to the said John Doe then and there did, to the great damage of the said John Doe, and against the peace of the State of Ohio; wherefore the said John Doe saith he is injured and hath sustained damage to the value of five hundred dollars, and therefore he brings his suit, &c.

PAYNE, WILSON & WADE &
FOOTE & WHITTLESEY,

Plaintiff's Attorneys.

Notice.

Mr. John G. Stockley.

DEAR SIR: I am informed that you are in possession of, or claim title to, the premises in this declaration of ejectment mentioned or to some part thereof, and I, being sued in this action as a casual ejector only, and having no claim or title to the same, do advise you to appear on the first day of the ensuing term in the Court of Common Pleas to be holden at Cleveland, within and for said County of Cuyahoga, on the eighteenth day of February, A. D. eighteen hundred forty six, by some attorney of that Court and then and there by rule of the same Court to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against

me by default, and you will be turned out of possession. Dated this sixth day of February, A. D. eighteen hundred and forty six.
Your loving friend

RICHARD ROE.

Return.

THE STATE OF OHIO,
Cuyahoga County, ss:

CLEVELAND, Feb'y 7, 1846.

I did this day personally serve this John G. Stockley, tenant in possession of the premises in the within declaration mentioned or part thereof, with a true copy of the within declaration and notice, and at the same time acquaint the said John G. Stockley with the intent and meaning of the said declaration and notice.

H. BEEBE, Sheriff.

Consent Rule.

And thereupon at this term the said City of Cleveland, by its attorneys appears and enters into the common Consent Rule as follows, to wit:

Court of Common Pleas, Cuyahoga County, Ohio, February Term, 1846.

562 JOHN DOE ex Dem. WILLIAM B. LLOYD, ELLERY G. WIL-
liams, Commissioner of Insolvents; Caroline Lloyd, Roselle
Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry
Lloyd, Jane E. Hayden, Mary Hayden, Caroline Hayden,
Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah
Hayden, and Thomas Hayden,

vs.

CITY OF CLEVELAND.

Plea.

And the said City of Cleveland comes and confesses the lease, entry and ouster in the said declaration mentioned and admits itself to be in possession of lots number- one, two, three and four, of a certain survey or subdivision of land in the City of Cleveland, as surveyed by order of the City Council of the City of Cleveland, and certified and returned by Ahaz Merchant, on the fourth day of February, A. D. 1845, which said lots are designated by numbers aforesaid, and are 20 feet front on the pier by 120 feet deep each, and parcel of the premises in the said declaration mentioned. And for plea says, that it is not guilty of the trespass and ejectment in the said declaration alleged against it, and of this puts itself upon the country, and the said John Doe doth like.

By G. W. LYNDE,

City Att'y.

Con.

And thereupon this cause was continued to the next term of said Court.

May T., 1846.

And afterwards, to wit: at the next term of said Court, begun and held at the Court House in Cleveland, in said County, on the twelfth day of May, eighteen hundred forty six, this cause was continued to the next term of said Court.

Nov. T., 1846.

Con.

And afterwards, to wit, at the next term of said Court, begun and held at the Court House in Cleveland in said County, on the third day of November, eighteen hundred forty six, this cause was continued to the next term of said Court.

February T., 1847.

Con.

And afterwards, to wit, at the next term of said Court, begun and held at the Court House in Cleveland in said County, on the seventeenth day of February, eighteen hundred forty seven, on motion of the defendant, this cause was continued to the next term of said Court and at its costs.

May T., 1847.

Con.

And afterwards, to wit, at the next term of said Court, begun and held at the Court House in Cleveland in said county, on the eleventh day of May, eighteen hundred forty seven, on motion of the defendant, this cause was continued and at its costs, to next term of said Court.

Nov. T., 1847.

Pl'ff Leave to Amend.

And afterwards, to wit, at the next term of said Court, begun and held at the Court House in Cleveland in said County, on the second day of November, eighteen hundred forty seven, on motion, the plaintiff had leave to amend on payment of costs since filing the defective pleading, and costs to be paid twelve days before the next term of said Court or become nonsuit.

Con.

And thereupon this cause was continued to the next term of said Court.

And afterwards, to wit, on the seventeenth day of January, eighteen hundred forty eight, said plaintiffs by their attorneys filed in the office of the Clerk of said Court their Amended Declaration in this case, as follows, to wit:

Court of Common Pleas.

THE STATE OF OHIO,

Cuyahoga County, ss:

Richard Doe was attached to answer John Doe of a plea whereof he, the said Richard Doe with force and arms entered into a parcel of land situated in the City of Cleveland and County aforesaid, to wit, lot- number- one, (1) two, (2) three, (3) and four (4) of a certain survey or subdivision of land in the City of Cleveland, in said County, as surveyed by order of the City Council of said Cleveland, and certified and returned by Ahaz Merchant, on the fourth (4th) day of February, A. D. 1845, with an allotment and plan, on which said lots are designated by the numbers aforesaid, and are each twenty (20) feet on the Pier by one hundred and twenty (120) feet deep each, with the appurtenances, situate in Cleveland aforesaid, which William B. Lloyd, Ellery G. Williams, as Commissioner of Insolvents, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Jane E. Hayden, Caroline Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, had demised to the said John Doe, for a term which is not expired;

And also wherein the said Richard Roe with force and arms entered into a certain other parcel of land situate in said City of Cleveland, and County aforesaid, and situate also in a surveyed subdivision of a part of said City of Cleveland made by Ahaz Merchant, February 4th, 1845, under direction of the City Council of said City, and known and distinguished on the plat of such survey as lots number-one (1) two, (2) three, (3) and four, (4) being each twenty (20) feet front on the Pier and one hundred and twenty (120) feet deep with the appurtenances, situate in Cleveland aforesaid, which William B. Lloyd, John W. Allen as assignee in Bankruptcy of Albert M. Lloyd, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Caroline Hayden, Jane E. Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, had demised to the said John Doe for a term which is not yet expired.

And also wherefore he, the said Richard Roe with force and arms entered into a certain other parcel of land situate in said City of Cleveland, and County aforesaid, and lying on the Easterly side of the Pier of the harbor at the mouth of the Cuyahoga River in said City of Cleveland, and known as lots numbers one, (1) two, (2)

three, (3) and four, (4) of the survey or subdivision of part of said city of Cleveland, made under the order of the City Council by Abaz Merchant surveyor, the return of which bears date February 4th, 1865, with the appurtenances, situate in the City of Cleveland, aforesaid which Wm. B. Lloyd, Albert M. Lloyd, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Caroline Hayden, Jane E. Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, had demised to the said John Doe, for a term which is not yet expired, and ejects him from his said several farms, and other wrongs to the said John Doe then and there did to the great damage of the said John Doe, and against the peace of the State of Ohio &c.

And thereupon the said John Doe, by Hitchcock, Wilson and Wade, his attorneys complains: that whereas the said William B. Lloyd, Ellery G. Williams, as Commissioner of Insolvents, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Caroline Hayden, Jane E. Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, on the second day of January, A. D. 1845, at Cleveland aforesaid, in the county aforesaid, had demised the lands and tenements first above mentioned, with the appurtenances to the said John Doe, to have and to hold the same to the said John Doe, and his assigns from the first day of January aforesaid, in the year aforesaid, for and during and unto the full end and term of ten years from thence next ensuing and fully to be completed and ended:

And also that whereas the said Wm. B. Lloyd, John W. Allen as assignee in Bankruptcy of Albert M. Lloyd, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Caroline Hayden, Jane E. Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden, and Thomas L. Hayden, on the second day of January, A. D. 1845, at Cleveland aforesaid in the county aforesaid, had demised the said lands and tenements secondly above described with the appurtenances to the said John Doe, to have and to hold the same to the said John Doe and his assigns from the first day of January aforesaid, in the year aforesaid, for and during and unto the full end and term of ten years from thence next ensuing and fully to be completed and ended;

And also that whereas the said Wm. B. Lloyd, Albert M. Lloyd, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Jane E. Hayden, Mary Hayden, Caroline Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, on the second day of January, A. D. 1845, at Cleveland aforesaid, in said County of Cuyahoga had demised the lands and tenements thirdly above mentioned with appurtenances to the said John Doe, and his assigns, from the first day of January aforesaid in the year aforesaid, for and during and unto the full term and end of ten years from thence next ensuing

and fully to be completed and ended. By virtue of which several demises the said John Doe entered into said several lands and tenements firstly, secondly and thirdly above mentioned, with the appurtenances, and became and was thereof possessed for the said several terms so to him thereof respectively granted as aforesaid.

566 And the said John Doe, being so thereof possessed, the said Richard Roe afterwards, to wit, on the third day of January aforesaid, in the year aforesaid, with force and arms, to wit, with guns and bills and swords and staves entered into the said several lands and tenements firstly, secondly, and thirdly above described, with the appurtenances in which the said John Doe was so interested and of which he was so possessed, in the manner and for the several terms aforesaid which are not yet expired and ejected him the said John Doe out of his said several farms and still keeps thereout the said John Doe so ejected as aforesaid, and other wrongs to the said John Doe then and there did, to the great damage of the said John Doe, and against the peace of the State of Ohio: Wherefore the said John Doe saith that he is injured and hath sustained damages to the value of five hundred dollars, and therefore he brings his suit, &c.

HITCHCOCK, WILLSON & WADE,

Plaintiff's Attorneys.

Notice.

Mr. John G. Stockley.

DEAR SIR: I am informed that you are in possession of, or claim title to, the premises in this declaration of ejectment mentioned or to some part thereof, and I, being sued in this action as a casual ejector only, and having no claim or title to the same, do advise you to appear on the first day of the ensuing term in the Court of Common Pleas to be holden at Cleveland, within and for said County of Cuyahoga, on the eighteenth day of February, A. D. eighteen hundred forty six, by some attorney of that Court and then and there by rule of the same Court to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession. Dated this sixth day of February, A. D. eighteen hundred and forty six.

Your loving friend,

RICHARD ROE.

And afterwards, to wit, on the twelfth day of February, eighteen hundred forty eight, said defendant by its attorney files in the office of the Clerk of said Court, the following consent rule and plea in this case, to wit:

JOHN DOE ex Demise of WILLIAM B. LLOYD & Others

vs.

CITY OF CLEVELAND.

567 And the said City of Cleveland comes and confesses the lease entry, and ouster in the said declaration mentioned, and admits itself in possession of a parcel of land in Cleveland City, to wit, Lots Nos. one, two, three and four, as described in said

declaration, and being parcel of the premises therein described; And for plea says that it is not guilty of the trespass and ejectment in the said declaration alleged against it, and of this puts itself upon the Country, and the said John Doe doth the like.

S. WILLIAMSON,

Att'y for Def't.

March T., 1848.

Con.

And afterwards, to wit, at the next term of said Court, begun and held at the Court House in Cleveland in said County, on the seventh day of March, eighteen hundred forty eight, this cause was continued to the next term of said Court.

June T., 1848.

Con.

And afterwards, to wit, at the next term of said Court, begun and held at the Court House in Cleveland in said County, on the twentieth day of June, eighteen hundred forty eight, this cause was continued on the defendant's motion and costs, until the next term of said Court.

Oct. T., 1848.

Con.

And afterwards, to wit, at the next term of said Court, begun and held at the Court House in Cleveland, in said County, on the third day of October, eighteen hundred forty eight, this cause was continued to the next term of said Court.

March T., 1849.

Con.

And afterwards, to wit, at the next term of said Court, begun and held at the Court House in Cleveland, in said County, on the nineteenth day of March, eighteen hundred forty nine, this cause was continued to the next term of said Court.

June T., 1849.

Con.

And afterwards, to wit, at the next term of said Court, begun and held at the Court House in Cleveland, in said County, on the nineteenth day of June, eighteen hundred forty nine, this cause was continued to the next term of said Court.

Oct. T., 1849.

Trial.

And afterwards, to wit, at the next term of said Court, begun and held at the Court House in Cleveland, in said County, on the second day of October, eighteen hundred forty nine, by and before their Honors, Philemon Bliss, Presiding Judge, Thomas M. Kelley, Quintus F. Atkins, and Benjamin Northrop, Associate Judges of said Court, came the parties by their attorneys, and submit this cause to the Court, who on hearing find, that the defendant is guilty of the trespass in ejectment in the manner and form as the plaintiffs have alleged against it; and they assess the plaintiffs' damages by reason of the premises to six cents:

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Judgment.

Therefore it is considered that the plaintiffs recover of the defendants their term yet to come in the premises aforesaid, and also their costs of suit taxed at thirteen dollars and sixty cents.

The defendant's costs are taxed at two dollars and thirty one cents.

(Endorsed:) Lessee of Wm. B. Lloyd et al. vs. The City of Cleveland. Copy of Record.

THE STATE OF OHIO,
Cuyahoga County, ss:

I, Roland D. Noble, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Pleadings, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing copy of record is taken and copied from the Records of the Proceedings of the Court of Common Pleas within and for said Cuyahoga County, and that said foregoing copy has been compared by me, with the original record, and that the same is a correct transcript therefrom.

In testimony whereof, I do hereunto subscribe my name officially, and affix the seal of said Court at the Court House in the City of Cleveland, in said County, this 9th day of July, A. D. 1859.

[SEAL.]

ROLAND D. NOBLE, *Clerk.*

(Endorsed:) No. 7—R. Doe Ex dem. Wm. B. Lloyd vs. The City of Cleveland. Com. Feb'y 7, 1846. Judgt. Oct. T. 7., 1849, for Lots 1, 2, 3, 4, Merchant Survey.

THE STATE OF OHIO,
Cuyahoga County, ss:

Ecn. Doc. 18-442. Records 53-190.

JOHN DOE ex Dem. WM. B. LLOYD, ELLERY G. WILLIAMS, as Com'r
 Insolvents; Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd,
 Abigail P. Lloyd, John Henry Lloyd, Jane E. Hayden,
 569 Caroline Hayden, William Miller & Mary Miller, Charles
 A. Barlow & Rosella Barlow, Ann Hayden, Margaret Hay-
 den, Sarah Hayden & Thomas L. Hayden

vs.

RICH. ROE, Tenants DANIEL P. RHODES, FRANCIS W. GIBBONS,
 JOHN McMILLER, AUSTIN RILEY & LAWRENCE WEBSTER.

Oct. 5, 1848.

Ejectment.

Be it remembered: That heretofore, to wit: at a term of the Court of Common Pleas begun and held at the Court House, in Cleveland, within and for said Cuyahoga County, on the third day of October, in the year of our Lord one thousand eight hundred forty eight, by and before their Honors, Benjamin Bissel, Presiding Judge, Asher M. Coe, Joseph Hayward, and Thomas M. Kelley, Associate Judges of said Court, same the said plaintiffs by their attorneys, and filed in said Court a certain declaration in ejectment against the said defendants with the Sheriff's service thereof endorsed and which are as follows, to wit:

Court of Common Pleas.

THE STATE OF OHIO,
Cuyahoga County, ss:

Declaration.

Richard Roe was attached to answer John Doe of a plea wherefore the said Richard Roe with force and arms entered into a parcel of land, situate in the City of Cleveland, and County aforesaid, to wit: one piece or parcel of land bounded North by Lake Erie, East by Commercial Street in said City as laid out by Ahaz Merchant by direction of the City Council in February, A. D. 1845, South by lot number eight (8) in the survey made by the said Merchant as aforesaid and West by the East Pier of the Harbor of Cleveland: Also another piece or parcel of land bounded North by Lake Erie, East by Water Street in said City, South by Bath Street, one hundred feet wide as surveyed and laid out by said Merchant in February, A. D. 1845, and West by Commercial Street aforesaid, with the appurtenances, situate in Cleveland aforesaid, which William B. Lloyd, Ellery G. Williams, as commissioner of Insolvents, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John

Henry Lloyd, Jane E. Hayden, Caroline Hayden, William Miller and Mary Miller, Charles A. Barlow and Rosella Barlow, Ann Hayden, Margaret Hayden, Sarah Hayden, and Thomas L. Hayden, had demised to the said John Doe for a term which is not yet expired. And also wherefore the said Richard Roe with force and arms

entered into a certain other parcel of land situate in the said
 570 City of Cleveland and County aforesaid, to wit: one piece or parcel of land bounded North by Lake Erie, East by Commercial Street in said City as laid out by Ahaz Merchant by direction of the City Council in February, A. D. 1845, South by lot number (8) eight in the survey made by the said Merchant as aforesaid and West by the East Pier of the Harbor of Cleveland; Also another piece or parcel of land bounded North by Lake Erie, East by Water Street in said City, South by Bath Street, one hundred feet wide, as surveyed and laid out by said Merchant in February A. D. 1845 & West by Commercial Street aforesaid, with the appurtenances, situate in Cleveland aforesaid, which William B. Lloyd, John W. Allen as assignee in Bankruptcy of Albert M. Lloyd, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Caroline Hayden, Jane E. Hayden, William Miller and Mary Miller, Charles A. Barlow and Rosella Barlow, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, had demised to the said John Doe for a Term which is not yet expired. And also wherefore he the said Richard Roe with force and arms entered into a certain other parcel of land situate in said City of Cleveland and County aforesaid, to wit: One piece or parcel of land bounded North by Lake Erie, East by Commercial Street in said City as laid out by Ahaz Merchant, by direction of the City Council, in February, A. D. 1845, South by lot number eight (8) in the survey made by the said Merchant as aforesaid, and West by the East Pier of the Harbor of Cleveland; And also another piece or parcel of land, bounded North by Lake Erie, East by Water Street in said City, South by Bath Street one hundred feet wide as surveyed and laid out by said Merchant in February, A. D. 1845, and West by Commercial Street aforesaid, with appurtenances, situated in Cleveland aforesaid, which William B. Lloyd, Albert M. Lloyd, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Caroline Hayden, John E. Hayden, William Miller and Mary Miller, Charles A. Barlow and Rosella Barlow, Ann Hayden Margaret Hayden, Sarah Hayden and Thomas L. Hayden, had demised to the said John Doe for a term which is not yet expired and ejected him from his said several farms and other wrongs to the said John Doe and against the peace of the State of Ohio, &c.

And thereupon the said John Doe by Hitchcock, Wilson and Wade, his attorneys, complains that whereas the said William B. Lloyd, Ellery G. Williams as Commissioner of Insolvents, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd,
 571 John Henry Lloyd, Caroline Hayden, Jane Hayden, William Miller and Mary Miller, Charles A. Barlow and Rosella Barlow, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, on the 2nd day of January A. D. 1848, at Cleveland afore-

said in the County aforesaid, had demised the lands and tenements first above mentioned, with the appurtenances, to the said John Doe, to have and to hold the same to the said John Doe and his assigns from the first day of January aforesaid in the year aforesaid for and during and unto the full end and term of ten years from thence next ensuing, and fully to be completed and ended.

And also that whereas the said William B. Lloyd, John W. Allen as Assignee in Bankruptcy of Albert M. Lloyd, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Caroline Hayden, Jane E. Hayden, William Miller and Mary Miller, Charles A. Barlow and Rosella Barlow, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, on the 2nd day of January, A. D. 1848, at Cleveland aforesaid in the County aforesaid had demised the said lands and tenements severally above described with the appurtenances to the said John Doe to have and to hold the same to the said John Doe and his assigns, from the first day of January aforesaid, in the year aforesaid, for and during and unto the full end and term of ten years from thence next ensuing, and fully to be completed and ended.

And also that whereas the said William B. Lloyd, Albert M. Lloyd, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Jane E. Hayden, William Miller and Marry Miller, Caroline Hayden, Charles A. Barlow and Rosella Barlow, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, on the second day of January, A. D. 1848, at Cleveland aforesaid in said county of Cuyahoga, had demised the lands and tenements thirdly above mentioned, with the appurtenances, to the said John Doe and his assigns from the first day of January aforesaid, in the year aforesaid for and during and unto the full end and term of ten years from thence next ensuing and fully to be completed and ended by virtue of which said several demises the said John Doe entered into the said several lands and tenements firstly, secondly and thirdly above described, with the appurtenances, and became and was thereof possessed for the said several terms so to him thereof respectively granted as aforesaid. And the said John Doe being so thereof possessed the said Richard Roe afterwards, to-wit, on the 3rd day of January aforesaid, in the year aforesaid, with force and arms, to wit, with guns and bills and swords and staves

572 entered into the said several lands and tenements firstly, secondly and thirdly above described, with the appurtenances, in which the said John Doe was so interested and of which he was so possessed in manner and for the several terms aforesaid, which are not yet expired, and ejected him, the said John Doe, out of his said several farms and still keeps thereout the said John Doe so ejected as aforesaid, and other wrongs to the said John Doe then and there did to the great damage of said John Doe, and against the peace of the State of Ohio. Wherefore the said John Doe saith that he is injured and sustained damage to the value of five hundred dollars and therefore he brings his suit, etc.

HITCHCOCK, WILSON & WADE,

Plaintiffs' Att'ys.

John Den & Richard Fen. pledges to prosecute.

Notice.

Messrs. Daniel P. Rhodes, Francis W. Gibbons, John McMiler,
Austin Riley & Lawrence Webber.

GENTS: I am informed that you are in possession of, or claim title to, the premises in this declaration of ejectment mentioned or to some part thereof, and I, being sued in this action as a casual ejector only, and having no claim or title to the same, do advise you to appear on the first day of the ensuing term in the Court of Common Pleas to be holden at Cleveland, within and for said County of Cuyahoga, on the third day of October, A. D. eighteen hundred and forty eight, by some attorney of that Court and then and there by Rule of the same Court to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession. Dated this 19th day of September, A. D. eighteen hundred and forty eight.

Your loving friend,

RICHARD ROE.

STATE OF OHIO,

Cuyahoga County, ss:

Return.

CLEVELAND, *Sept.* 23, 1848.

I served this declaration and notice on the within named Francis W. Gibbons, John McMiler, Daniel P. Rhodes, Austin Riley and Lawrence Webber, on the 22nd day of September 1848, by delivering to each a copy of the same, and at the same time, I explained the nature and contents of said declaration and notice to each of the above named persons.

H. BEEBE, *Sheriff,*
By E. S. ROOT, *Deputy.*

And thereupon, at this term, comes the City of Cleveland by its counsel and enters into the common Consent Rule as follows, to wit:

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Consent Rule.

Court of Common Pleas, October Term, A. D. 1848.

JOHN DOE ex Dem. of WM. B. LLOYD et al.

vs.

CITY OF CLEVELAND.

Plea.

And the said City comes and confesses the lease, entry and ouster in the said declaration mentioned, and admits itself to be in possession of the premises in the said declaration mentioned and for plea says, that it is not guilty of the trespass and ejectment in the

said declaration alleged against it, and of this it puts itself upon the Country, and the said John Doe doth the like.

By S. WILLIAMSON,
Its Att'y.

Con.

And thereupon this cause was continued to the next term of said Court.

March T., 1849.

Con.

And afterwards, to wit, at the next term of said Court, begun and held at the Court House in Cleveland, within and for said County, on the nineteenth day of March, eighteen hundred and forty nine, this cause was continued to the next term of said Court.

June T., 1849.

Con.

And afterwards, to wit, at the next term of said Court begun and held at the Court House in Cleveland, within and for said Cuyahoga County, on the nineteenth day of June, eighteen hundred and forty nine, this cause was continued to the next term of said Court.

Oct. T., 1849.

And afterwards, to wit, at the next term of said Court, begun and held at the Court House in Cleveland, within and for said Cuyahoga County, on the second day of October, eighteen hundred and forty nine by and before their honors, Philemon Bliss, Presiding Judge, Thomas M. Kelley, Quintus F. Atkins, and Benjamin Northrop, Associate Judges of said Court come the parties by their attorneys, and submit this cause to the Court, who on hearing find, that the defendants are guilty of the trespass in ejectment in the manner and form as the pl'ffs have alleged against them; and they assess the plaintiffs' damages against them by reason of the premises to six cents:

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Judgment.

Therefore it is considered that the plaintiffs recover of the defendants their term yet to come in the premises aforesaid, and also their damages and costs of suit taxed at sixteen dollars and twenty two cents (\$16.22).

The defendant's costs are taxed at one dollar and eleven cents (\$1.11).

(Endorsed:) John Doe, ex dem. Wm. B. Lloyd et al. vs. City of Cleveland. Copy of Record.

I, Roland D. Noble, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Pleadings Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing copy of record is taken and copied from the Records of the Proceedings of the Court of Common Pleas within and for said Cuyahoga County, and that said foregoing copy has been compared by me, with the original record, and that the same is a correct transcript therefrom.

In Testimony Whereof, I do hereunto subscribe my name officially, and affix the Seal of said Court at the Court House in the City of Cleveland, in said County, this 9th day of July A. D. 1859.

[SEAL.]

ROLAND D. NOBLE, *Clerk.*

I, Thomas Bolton, Presiding Judge of the Court of Common Pleas, of the Third Subdivision of the Fourth Judicial District of the State of Ohio, in which subdivision is said County of Cuyahoga, do hereby certify that said Roland D. Noble was at the date of the above certificate, and now is, Clerk of said Court of Common Pleas, within and for said Cuyahoga County, and State of Ohio, and that said Clerk is the officer in whose custody the said original Files, Pleadings, Journals and Records are required to be kept by the laws of the State of Ohio, and that said attestation to said copy of said record is in due form of law.

Signed by me, and dated at Cleveland, Cuyahoga County, Ohio, this 9th day of July, A. D. 1859.

THOMAS BOLTON,

Judge as Aforesaid.

(Endorsed.)

No. 8-R. Do. ex dem. of Wm. B. Lloyd et al. vs. City of Cleveland. Served Sep. 23, 1848.

575 Judgt. Oct. T., 1849, of all N. of — alley and N. of Commercial Street and all Bath St. east of do. and west of Water Street and north of 100 foot resd. for Front Street.

THE STATE OF OHIO,
Cuyahoga County, ss:

Enc. Doc. 17-121.

Records 53-132.

LESSEE OF WILLIAM B. LLOYD, ELLERY G. WILLIAMS, Com'r Ins.;
 Caroline, Rosetta, Delia A., Abigail P., and John W. Lloyd; Jane
 E., Mary, Caroline, Rosella, Ann, Margaret, Sarah, & Thomas L.
 Hayden

vs.
 THE CITY OF CLEVELAND.

Ejectment.

Feb'y 5, 1846.

Declaration.

Be it remembered that heretofore, to wit, at a term of the Court of Common Pleas begun and held at the Court House in Cleveland, within and for the said Cuyahoga County on the eighteenth day of February, in the year of our Lord eighteen hundred forty six, by and before their honors Benjamin Bissel, President Judge Asher M. Coe, Joseph Hayward and Thomas M. Kelley, Associate Judges of said Court, came the said plaintiffs by their attorneys, and filed in said Court a certain declaration in ejectment against the said defendant, with the Sheriff's service thereof indorsed and which are as follows, to wit:

THE STATE OF OHIO,
Cuyahoga County, ss:

Court of Common Pleas, Vacation after November Term, A. D.
 1845.

Richard Roe was attached to answer John Doe of a plea wherefore he the said Richard Roe, with force and arms, &c. entered into the following described lot of land with the appurtenances, that is to say: Lot No. six (6) of the survey and allotment made by Ahaz Merchant of a portion of the City of Cleveland and of which the plat and return was made to the City Council February 4th, 1845. Said lot No. 6 having twenty feet front on the Easterly Pier of the harbor of the mouth of the Cuyahoga River by 120 feet in depth or rear, which Wm. Lloyd, Ellery G. Williams, as Commissioner of Insolvents, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, representing seven eight-s, Jane E. Hayden, Mary Hayden, Caroline Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, representing one eighth, had demised to the said John Doe, 576 for a certain term which is not yet expired, and ejected him from his said farm; and other wrongs to the said John Doe

then and there did, to the great damage of the said John Doe, and against the peace of the State of Ohio, &c.

And thereupon, the said John Doe, by Payne, Wilson & Wade & Foote & Whittlesey, his attorneys, Complains: That whereas, the said Wm. B. Ellery G. Caroline Lloyd, Rosetta Lloyd, Delia Ann, Abigail P. John Henry, Jane E. Mary, Caroline, Rosetta Hayden, Ann, Margaret, Sarah, and Thomas L., on the second day of January, in the year of our Lord, eighteen hundred and forty five, at Cleveland aforesaid, in the County aforesaid, had demised the said tenements, with the appurtenances, to the said John Doe to have and to hold the same to the said John Doe and his assigns from the first day of January aforesaid, in the year aforesaid, for and during and unto the full end and term of ten years, from thence next ensuing and fully to be completed and ended. By virtue of which said demise, the said John Doe entered into the said tenements with the appurtenances, and became and was thereof possessed, for the said term, so to him thereof granted, as aforesaid. And the said John Doe, being so thereof possessed, said Richard Roe afterwards, to wit, on the third day of January aforesaid, in the year aforesaid, with force and arms, to wit, with guns and bills and swords and staves, entered into the said tenements, with the appurtenances, in which the said John Doe was so interested, and of which he was so possessed, in manner and for the term aforesaid, which is not yet expired, and ejected him, the said John Doe, out of his said farm and still keeps thereout the said John Doe so ejected as aforesaid, and other wrongs to the said John Doe, then and there did to the great damage of said John Doe and against the peace of the State of Ohio.

Wherefore the said John Doe saith he is injured and hath sustained damage to the value of five hundred dollars, and therefore he brings this suit, &c.

PAYNE, WILSON & WADE &
FOOTE & WHITTLESEY,
Plaintiff's Attorneys.

Notice.

Mr. Michael Davis.

DEAR SIR: I am informed that you are in possession of, or claim title to, the premises in this declaration of ejectment mentioned or to some part thereof, and I, being sued in this action as a casual ejector only, and having no claim or title to the same, do advise you to appear on the first day of the ensuing term in the Court of Common Pleas to be holden at Cleveland, within and for said

County of Cuyahoga, on the eighteenth day of February, 577 A. D. eighteen forty six, by some attorney of that Court and then and there by rule of the same Court to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession. Dated this sixth day of February, A. D. eighteen hundred and forty six.

Your loving friend,

RICHARD ROE.

Return.

STATE OF OHIO,
Cuyahoga County, ss:

CLEVELAND, February 7th, 1846.

I this day did personally serve Michael Davis tenant in possession of the premises in the within declaration mentioned or of a part thereof, with a true copy of the within declaration and notice and at the same time acquainted the said Michael Davis with the intent and meaning of the said declaration and notice.

H. BEEBE, *Sheriff.*

Consent Rule.

And thereupon at this term the said City of Cleveland, by its attorney, appears and enters into the common Consent Rule as follows, to wit:

Court of Common Pleas, Cuyahoga County, Ohio, February Term,
1846.

JOHN DOE ex Dem. WILLIAM B. LLOYD, ELLERY G. WILLIAMS,
Commissioner of Insolvents; Caroline Lloyd, Rosella Lloyd, Delia
Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Jane E. Hay-
den, Mary Hayden, Caroline Hayden, Rosella Hayden, Ann
Hayden, Margaret Hayden, Sarah Hayden, and Thomas Hayden
vs.

CITY OF CLEVELAND.

And the said City of Cleveland comes and confesses the lease entry and ouster in the said declaration mentioned and admits itself to be in possession of lot number six of the survey and allotment made by Ahaz Merchant of a portion of the City of Cleveland of which the plat and return was made to the City Council February 4th, 1845. Said lot having 20 feet front on the Easterly Pier of the harbor at the mouth of the Cuyahoga River by 120 feet in depth, and parcel of the premises in the said declaration mentioned:

Plea.

And for plea says, that it is not guilty of the trespass and ejectment in the said declaration alleged against it, and of this puts itself upon the Country, and the said John Doe doth like.

By G. W. LYNDE,
City Att'y.

And thereupon this cause was continued to the next term of said Court.

May T., 1846.

Con.

And afterwards, to wit, at a term of the Court of Common Pleas, begun and held at the Court House in Cleveland within and for said Cuyahoga County, on the twelfth day of May, eighteen hundred forty six, this cause was continued to the next term of said Court.

Nov. T., 1846.

Con.

And afterwards, to wit, at a term of the Court of Common Pleas, begun and held at the Court House in Cleveland within and for said Cuyahoga County, on the third day of November, eighteen hundred forty six, this cause was continued to the next term of said Court.

Feb'y T., 1847.

Con.

And afterwards, to wit, at a term of the Court of Common Pleas, begun and held at the Court House in Cleveland within and for said Cuyahoga County, on the seventeenth day of February, eighteen hundred and forty seven, on motion of the defendants this cause is continued and at their costs, taxed at 50c.

May T., 1847.

Con.

And afterwards, to wit, at a term of the Court of Common Pleas, begun and held at the Court House in Cleveland within and for said Cuyahoga County on the eleventh day of May, eighteen hundred forty seven, on motion of the Defts., this cause is continued and at their costs, taxed at 50c.

Nov. T., 1847.

Pl'ff Leave to Amend.

And afterwards, to wit, at a term of the Court of Common Pleas, begun and held at the Court House in Cleveland within and
579 for said Cuyahoga County on the second day of November, eighteen hundred forty seven, on motion the pl'ff has leave to amend on payment of costs since filing the defective papers, & costs to be paid twelve days before next term, or to become non suit.

Con.

And thereupon this cause was continued to the next term of said Court.

And afterwards, to wit on the seventeenth day of January, eighteen hundred forty eight, said plaintiffs by their attorneys filed in the office of the Clerk of said Court their amended declaration in this case, as follows, to wit:

Court of Common Pleas.

THE STATE OF OHIO,

Cuyahoga County, ss:

Richard Doe was attached to answer John Doe of a plea whereof he, the said Richard Doe, with force and arms entered into a parcel of land situated in the City of Cleveland and County aforesaid, to wit, lot number six (6) of the survey and allotment made by Ahaz Merchant of a portion of the City of Cleveland and of which the plat and return was made to the City Council, Feb'y 4th, 1845. Said lot number six (6) being twenty (20) feet front on the Easterly Pier of the harbor at the mouth of the Cuyahoga River by one hundred and twenty (120) feet in depth with the appurtenances situate in Cleveland aforesaid, which Wm. B. Lloyd, Ellery G. Williams, as Commissioners of Insolvents, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Jane E. Hayden, Caroline Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, had demised to the said John Doe, for a term which is not expired.

And also wherein the said Richard Roe with force and arms entered into a certain other parcel of land situate in said — of Cleveland and county aforesaid & also situated in the survey or subdivision of part of said City of Cleveland made under the order of the City Council of said City by Ahaz Merchant Surveyor and dated February 4th, 1845, and known as lot number six (6) in said survey or subdivision being twenty (20) feet front on the east pier of the harbor and one hundred and twenty (120) feet deep with the appurtenances, situate in Cleveland aforesaid, which Wm. B. Lloyd, John W. Allen as assignee in Bankruptcy of Albert M. Lloyd, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John

Henry Lloyd, Caroline Hayden, Jane E. Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, had demised to the said John Doe for a term which is not yet expired.

And also wherefore he, the said Richard Roe with force and arms entered into a certain other parcel of land situate in said City of Cleveland and County aforesaid, being on the easterly side of the pier of the harbor at the mouth of the Cuyahoga River in said City of Cleveland and known as lot number six (6) in the survey or subdivision of a part of said City of Cleveland made by Ahaz Merchant under the direction of the City Council of said City the return of which is dated February 4, 1845, and being twenty (20) feet front and one hundred and twenty (120) feet deep, with the appurtenances, situate in the City of Cleveland, aforesaid which Wm. B. Lloyd, Albert M. Lloyd, Caroline Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Caroline Hayden, Jane E. Hayden,

Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, had demised to the said John Doe, for a term which is not yet expired, and ejects him from his said several farms, and other wrongs to the said John Doe then and there did to the great damage of the said John Doe, and against the peace of the State of Ohio, &c.

And thereupon the said John Doe by Hitchcock, Wilson and Wade, his attorneys Complains: That whereas the said William B. Lloyd, Ellery G. Williams as Commissioner of Insolvents, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Caroline Hayden, Mary Hayden, Jane E. Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, on the 2nd day of January, A. D. 1845, at Cleveland aforesaid, in the county aforesaid had demised the lands and tenements first above mentioned, with the appurtenances, to the said John Doe, to have and to hold the same to the said John Doe and his assigns from the first day of January aforesaid in the year aforesaid for and during and unto the full end and term of ten years from thence next ensuing, and fully to be completed and ended.

And also that whereas the said Wm. B. Lloyd, John W. Allen, as assignee in Bankruptcy of Albert M. Lloyd, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Caroline Hayden, Jane E. Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, on the second day of January, A. D. 1845, at Cleveland aforesaid, in the County aforesaid had demised the said lands and tenements secondly above described with the appurtenances to the said John Doe to have and to hold the same to the said John Doe and his assigns, from the first day of January aforesaid, in the year aforesaid, for and during and unto the full end and term of ten years from thence next ensuing, and fully to be completed, and ended.

And also that whereas the said William B. Lloyd, Albert M. Lloyd, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Jane E. Hayden, Mary Hayden, Caroline Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, on the second day of January, A. D. 1845, at Cleveland aforesaid in said County of Cuyahoga, had demised the lands and tenements thirdly above mentioned, with the appurtenances, to the said John Doe and his assigns from the first day of January aforesaid, in the year aforesaid for and during and unto the full end and term of ten years from thence next ensuing and fully to be completed and ended by virtue of which said several demises the said John Doe entered into the several lands and tenements firstly, secondly, and thirdly above described, with the appurtenances, and became and was thereof possessed for the said several terms so to him thereof granted as aforesaid.

And the said John Doe being so thereof possessed the said Richard Roe afterwards, to wit, on the third day of January aforesaid, in the year aforesaid, with force and arms, to-wit, with guns and bills and

swords and staves entered into the said several lands and tenements first, secondly and thirdly above described, with the appurtenances, in which the said John Doe was so interested and of which he was so possessed in manner and for the several terms aforesaid, which are not yet expired, and ejected him, the said John Doe, out of his said several farms and still keeps thereout the said John Doe so ejected as aforesaid, and other wrongs to the said John Doe then and there did to the great damage of the said John Doe, and against the peace of the State of Ohio. Wherefore the said John Doe saith that he is injured and hath sustained damage to the value of five hundred dollars and therefore he brings his suit, etc.

HITCHCOCK, WILSON & WADE,

Plaintiff's Att'ys.

Notice.

Mr. Michael Davis.

DEAR SIR: I am informed that you are in possession of, or claim title to, the premises in this declaration of ejectment mentioned or to some part thereof, and I, being sued in this action as a casual ejector only, and having no claim or title to the same, do advise you to appear on the first day of the ensuing term in the 582 Court of Common Pleas to be holden at Cleveland, within and for said County of Cuyahoga, on the eighteenth day of February, A. D. eighteen hundred forty six, by some attorney of that Court and then and there by rule of the same Court to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession. Dated this sixth day of February, A. D. eighteen hundred and forty six.

Your loving friend,

RICHARD ROE.

And afterwards, to wit, on the twelfth day of February eighteen hundred forty eight, said defendant by its Attorney filed in the office of the Clerk of said Court the following Consent rule and plea in this case, to wit:

Consent Rule.

JOHN DOE ex Demise of WILLIAM B. LLOYD & Others

vs.

CITY OF CLEVELAND.

And the said City of Cleveland comes and confesses the lease, entry and ouster in the said declaration mentioned and admits itself in possession of a parcel of land in Cleveland City to wit: Lot No. six described in said plaintiffs and being the premises therein described.

Plea.

And for plea says, that it is not guilty of the trespass and ejectment in the said declaration alleged against it, and of this puts itself upon the Country, and the said John Does doth the like.

S. WILLIAMSON,
Attorney for Def't.

March T., 1848.

Con.

And afterwards, to wit, at a term of the Court of Common Pleas, begun and held at the Court House in Cleveland within and for said Cuyahoga County, on the seventh day of March, A. D. 1848, this cause was continued to the next term of said Court.

June T., 1848.

Con.

And afterwards, to wit, at a term of the Court of Common Pleas, begun and held at the Court House in Cleveland within and for said Cuyahoga County, on the twentieth day of June, 1848, this cause is continued on defendant's motion and costs, 50c.

Oct. T., 1848.

Con.

And afterwards, to wit, at a term of the Court of Common Pleas, begun and held at the Court House in Cleveland within and for said Cuyahoga County, on the third day of October, eighteen hundred forty eight this cause was continued to the next term of said Court.

March T., 1849.

Con.

And afterwards, to wit, at a term of the Court of Common Pleas, begun and held at the Court House in Cleveland within and for said Cuyahoga County, on the nineteenth day of March, eighteen hundred forty nine this cause was continued to the next term of said Court.

June T., 1849.

Con.

And afterwards, to wit, at a term of said Court begun and held at the Court House in Cleveland, within and for said Cuyahoga

County, on the nineteenth day of June, eighteen hundred and forty nine, this cause was continued to the next term of said Court.

Oct. T., 1849.

Trial.

And afterwards, to wit, at a term of said Court of Common Pleas, begun and held at the Court House in Cleveland, within and for said Cuyahoga County, on the second day of October, eighteen hundred forty nine, by and before their honors, Philemon Bliss, President Judge, Thomas M. Kelley, Quintus F. Atkins, and Benjamin Northrop, Associate Judges of said Court come the parties by their Att'ys and submit this cause to the Court, who on hearing find, that the defendant is guilty of the trespass in ejectment in the manner and form as the pl'ffs have alleged against it; and they assess the pl'ffs' damages by reason of the premises to six cents:

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Judgment.

Therefore it is considered that the pl'ffs recover of the Def't their term yet to come in the premises aforesaid, and also their damages and costs of suit. Pl'ffs' costs are taxed to thirteen dollars sixty cents (\$13.60).

The defendant's costs are taxed at two dollars and thirty one cents (\$2.31).

(Endorsed:) Lessee of Wm. B. Lloyd et al. vs. The City of Cleveland. Copy of Record.

THE STATE OF OHIO,

Cuyahoga County, ss:

I, Roland D. Noble, Clerk of the Court of Common Pleas, within and for said county, and in whose custody the Files, Pleadings Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing copy of record is taken and copied from the records of the Proceedings of the Court of Common Pleas within and for said Cuyahoga County, and that said foregoing copy has been compared by me, with the original record, and that the same is a correct transcript therefrom.

In testimony whereof, I do hereunto subscribe my name officially, and affix the Seal of said Court at the Court House in the City of Cleveland, in said County, this 9th day of July, A. D. 1859.

[SEAL.]

ROLAND D. NOBLE, *Clerk.*

I, Thomas Bolton, Presiding Judge of the Court of Common Pleas, of the Third Subdivision of the Fourth Judicial District of the State of Ohio, in which subdivision is said County of Cuyahoga, do hereby certify that said Roland D. Noble was at the date of the above certificate, and now is, Clerk of said Court of Common Pleas,

within and for said Cuyahoga County, and State of Ohio, and that said Clerk is the officer in whose custody the said original Files, Pleadings, Journals and Records are required to be kept by the laws of the State of Ohio, and that said attestation to said copy of said record is in due form of law.

Signed by me, and dated at Cleveland, Cuyahoga County, Ohio, this 9th day of July, A. D. 1859.

THOMAS BOLTON,
Judge as Aforesaid.

(Endorsed:) No. 5—R. Doe, ex dem. Wm. Lloyd vs. The City of Cleveland. Ejet. For Lot 6 of Merchant's Survey; writ served Feb'y 7, 1846; Jt. Oct. 2, 1849.

585 THE STATE OF OHIO,
Cuyahoga County, ss:

En. Doc. 17-120. Records 53-115.

LESSEE OF WILLIAM B. LLOYD, ELLERY G. WILLIAMS, Com'r;
Caroline, Rosetta, Delia A., Abigail P. and John H. Lloyd,
Jane E., Mary, Caroline, Rosetta, Ann, Margaret, Sarah & Thos.
L. Hayden,

vs.

THE CITY OF CLEVELAND.

Ejectment.

Feb'y T., 1846.

Declaration.

Be it remembered, that heretofore, to wit, at a term of the Court of Common Pleas begun and held at the Court House in Cleveland within and for said County of Cuyahoga, Ohio, on the eighteenth day of February, eighteen hundred forty six, by and before their Honors Benjamin Bissel, President Judge Asher M. Coe, Joseph Hayward, and Thomas M. Kelley, Associate Judges of said Court, came the said plaintiffs by their attorneys, and filed in said Court a certain declaration in ejectment against the said defendant, with the sheriff's service thereof indorsed and which are as follows, to wit:

THE STATE OF OHIO,
Cuyahoga County, ss:

Court of Common Pleas, Vacation after November Term, A. D. 1845.

Richard Doe was attached to answer John Doe of a plea, wherefore he, the said Richard Roe, with force and arms, &c. entered into the following described lot of land with the appurtenances,

that is to say: Lots number five, seven and eight of the survey and allotment of part of the City of Cleveland, made and returned by Ahaz Merchant, by direction of the City of Cleveland, which plan and return is dated Feb'y 4th, 1845, and which lots front on the Eastern Pier of the harbor at the mouth of the Cuyahoga River, in the City of Cleveland, and County aforesaid, being 20 feet front and 120 feet deep each, which William B. Lloyd, Ellery G. Williams, as Commissioner of Insolvents, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, representing seven eighths, Jane E. Hayden, Mary Hayden, Caroline Hayden, Rosetta Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden, Thomas L. Hayden, representing one eighth, had demised to the said John Doe, for a term which is not yet expired, and ejected him from his said farm; and other wrongs to the said John Doe, then and there did, to the great damage of the said John Doe, and against the peace of the State of Ohio, &c.

And thereupon, the said John Doe, by Payne, Willson & Wade and Foote and Whittlesey, his attorneys, complains: That whereas, the said William B. Ellery G., Caroline Lloyd, Rosetta Lloyd, Delia Ann Lloyd, Abigail P., John Henry, Jane E., Mary, Rosetta Hayden, Ann, Margaret, Sarah, and Thomas L., on the second day of January, in the year of our Lord, one thousand eight hundred and forty five, at Cleveland aforesaid, in the County aforesaid, had demised the said tenements, with the appurtenances, to the said John Doe to have and to hold the same to the said John Doe and his assigns from the first day of January aforesaid, in the year aforesaid, for and during and unto the full end and term of ten years, from thence next ensuing and fully to be completed and ended. By virtue of which said demise, the said John Doe entered into the said tenements with the appurtenances, and became and was thereof possessed, for the said term, so to him thereof granted as aforesaid. And the said John Doe, being so thereof possessed, said Richard Roe afterwards, to wit, on the third day of January aforesaid, in the year aforesaid, with force and arms, to wit, with guns and bills and swords and staves, entered into the said tenements, with the appurtenances, in which the said John Doe was so interested, and of which he was so possessed, in manner and for the term aforesaid, which is not yet expired, and ejected him, the said John Doe, out of his said farm and still keeps thereout the said John Doe so ejected as aforesaid, and other wrongs to the said John Doe, then and there did to the great damage of the said John Doe and against the peace of the State of Ohio.

Wherefore the said John Doe saith he is injured and hath sustained damage to the value of five hundred dollars, and therefore he brings his suit, &c.

PAYNE, WILLSON & WADE &
FOOTE & WHITTLESEY,

Plaintiffs' Attorneys.

Notice.

Mr. Daniel Upson.

D'R SIR: I am informed that you are in possession of, or claim title to, the premises in this declaration of ejectment mentioned or to some part thereof, and I, being sued in this action as a casual ejector, only, and having no claim or title to the same, do advise you to appear on the first day of the ensuing term in the Court of Common Pleas to be holden at Cleveland, within and for said County of Cuyahoga, on the eighteenth day of February, A. D. 1846, by some attorney of that Court and then and there by rule of the same Court to cause yourself to be made defendant in
587 my stead, otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession. Dated this sixth day of February, A. D. eighteen hundred and forty six.

Your loving friend,

RICHARD ROE.

Return.

STATE OF OHIO,

Cuyahoga County, ss:

CLEVELAND, *Feb'y 7th*, 1846.

I this day served this writ on Daniel Upson, tenant in possession of the premises in the within declaration mentioned or of part thereof with a true copy of the within declaration and notice by delivering a true copy of the within declaration and notice to E. Fosdick, Agent for Daniel Upson on the premises, Daniel Upson being absent, and at the same time acquainted the said E. Fosdick with the intent and meaning of the said declaration and notice.

H. BEEBE, *Sheriff*.

And thereupon at this term the City of Cleveland appears by its attorney, George W. Lynde, Esq. and enters into the common consent rule, as follows, to wit:

Consent Rule.

John Doe, ex dem. Wm. B. Lloyd, Ellery G. Williams, as Commissioner of Insolvents, Caroline Lloyd, Rosetta Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Ann Hayden, Margaret Hayden, Sarah Hayden, Jane E. Hayden, Mary Hayden, Caroline Hayden, Rosetta Hayden, and Thomas L. Hayden vs. The City of Cleveland, Court of Common Pleas of Cuyahoga County, and State of Ohio, at the February Term, A. D. 1846. And the said City of Cleveland, and confesses the lease, entry and ouster in the said declaration mentioned, and admits itself to be in possession of lots number five, seven and eight of the survey and allotment of part of the City of Cleveland made and returned by Ahaz Merchant on the 4th day of February, 1845, by direction of the City Council of the City of Cleveland, and being parcel of the prem-

ises in the said declaration mentioned, and for plea says, that it is not guilty of the trespass and ejectment in the said declaration alleged against it; and of this it puts itself upon the Country, and the said John Doe doth the like.

By G. W. LYNDE,
City Attorney.

Con.

And thereupon this cause was continued to the next term of said Court.

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May T., 1846.

Con.

And afterwards, to wit, at the next term of said Court, begun and held at the Court House in Cleveland, within and for said Cuyahoga County, on the twelfth day of May, eighteen hundred forty six, this cause was continued to the next term of said Court.

Nov. T., 1846.

Con.

And afterwards, to wit, at the next term of said Court, begun and held at the Court House in Cleveland, within and for said County of Cuyahoga, on the third day of November, eighteen hundred forty six, this cause was continued to the next term of said Court.

Feb'y T., 1847.

Con.

And afterwards, to wit, at the next term of said Court, begun and held at the Court House in Cleveland, within and for said County of Cuyahoga, on the seventeenth day of February, eighteen hundred forty seven, on motion of the defendant, this cause is continued and at its costs.

May T., 1847.

Con.

And afterwards, to wit, at the next term of said Court, begun and held at the Court House in Cleveland, within and for said Cuyahoga County, on the eleventh day of May, eighteen hundred forty seven, on motion of the defendant, this cause is continued and at its costs.

Nov. T., 1847.

Pl'ff- Leave to Amend.

And afterwards, to wit, at the next term of said Court, begun and held at the Court House in Cleveland, within and for said

Cuyahoga County, on the second day of November, eighteen hundred forty seven, on motion the plaintiff has leave to amend on payment of costs since filing the defective paper, and costs to be paid twelve days before the next term, or the plaintiff to become non suit.

589

Con.

And thereupon this cause was continued to the next term of said Court.

And afterwards, to wit on the seventeenth day of January, eighteen hundred forty eight, said plaintiffs by their attorneys filed in the office of the Clerk of said Court their Amended Declaration, as follows, to wit:

THE STATE OF OHIO,

Cuyahoga County, ss:

Court of Common Pleas.

Richard Doe was attached to answer John Doe of a plea whereof he, the said Richard Roe with force and arms entered into a parcel of land situated in the City of Cleveland and County aforesaid, to wit: lots number five, (5) seven, (7) and eight (8) of the survey and allotment of a part of the City of Cleveland, made and returned by Ahaz Merchant by the direction of said City of Cleveland, which plan and return is dated Feby. 4th, 1845, and which lots front on the Eastern Pier of said Harbor at the mouth of the Cuyahoga River, in the City of Cleveland, and County aforesaid, being each twenty (20) feet front, and one hundred and twenty (120) feet deep, with appurtenances, situate in Cleveland aforesaid, which Wm. B. Lloyd, Ellery G. Williams, as Commissioner of Insolvents, Caroline Lloyd, Rosetta Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Jane E. Hayden, Caroline Hayden, Mary Hayden, Rosetta Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, had demised to the said John Doe, for a term which is not expired:

And also wherein the said Richard Roe with force and arms entered into a certain other parcel of land situate in said City of Cleveland and county aforesaid, and situate also in the survey and allotment of part of the City of Cleveland, made by Ahaz Merchant under the direction of the City Council Feb'y 4, 1845, and known as lot number five (5), seven, (7) and eight (8) in said survey made of said lots fronting on the Eastern Pier of the Harbor at the mouth of the Cuyahoga River, and each being twenty (20) feet front and one hundred and twenty feet deep, with the appurtenances, situate in Cleveland aforesaid, which Wm. B. Lloyd, John W. Allen as assignee in Bankruptcy of Albert M. Lloyd, Caroline Lloyd, Abigail P. Lloyd, Rosella Lloyd, Delia Ann Lloyd, John Henry Lloyd, Caroline Hayden, Jane E. Hayden, Mary Hayden, Rosella Hayden,

Ann Hayden, Margaret Hayden, Sarah Hayden, and Thomas L. Hayden, had demised to the said John Doe, for a term which is not yet expired;

590 And also wherefore he, the said Richard Roe with force and arms entered into a certain other parcel of land situate in said City of Cleveland, and County aforesaid, and lying on the Easterly side of the Pier of the Harbor at the mouth of the Cuyahoga River, in said City of Cleveland, and known as lots number five (5), seven (7) and eight (8) of the survey and allotment of part of the City of Cleveland, made and returned by Ahaz Merchant, by direction of the City of Cleveland, which plan and return is dated Feb'y 4, 1845, and which lots are each twenty (20) feet front and one hundred and twenty (120) feet deep, with the appurtenances, situate in the City of Cleveland aforesaid, which Wm. B. Lloyd, Albert M. Lloyd, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Caroline Hayden, Jane E. Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, had demised to the said John Doe, for a term which is not yet expired, and ejects him from his said several farms, and other wrongs to the said John Doe then and there did to the great damage of the said John Doe, and against the peace of the State of Ohio &c.

And thereupon the said John Doe by Hitchcock, Wilson and Wade, his attorneys, complains that whereas the said William B. Lloyd, Ellery G. Williams, as Commissioner of Insolvents, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Caroline Hayden, Jane E. Hayden, and Mary Hayden, Rosella Hayden, Sarah Hayden and Thomas L. Hayden, on the second day of January, A. D. 1845, at Cleveland aforesaid in the County aforesaid had demised the lands and tenements first above mentioned, with the appurtenances, to the said John Doe, to have and to hold the same to the said John Doe and his assigns from the first day of January aforesaid in the year aforesaid for and during and unto the full end and term of ten years from thence next ensuing, and fully to be completed and ended.

And also that whereas the said Wm. B. Lloyd, John W. Allen as assignee in Bankruptcy of Albert M. Lloyd, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Caroline Hayden, Jane E. Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, on the second day of January A. D. 1845, at Cleveland aforesaid, in the County aforesaid, had demised the said lands and tenements secondly above described with the appurtenances to the said John Doe to have and to hold the same to the said John Doe and his assigns from the first day of January aforesaid, in the year aforesaid, for and during and unto the full end and term of

591 ten years from thence next ensuing, and fully to be completed and ended.

And also that whereas the said Wm. B. Lloyd, Albert M. Lloyd, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Jane E. Hayden, Mary Hayden, Caroline Hay-

den, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, on the second day of January, A. D. 1845, at Cleveland aforesaid in said County of Cuyahoga, had demised the lands and tenements thereby above mentioned, with the appurtenances, to the said John Doe and his assigns from the first day of January aforesaid, in the year aforesaid for and during and unto the full end and term of ten years from thence next ensuing and fully to be completed and ended by virtue of which said second demise the said John Doe entered into the said several lands and tenements firstly, secondly, and thirdly above described, with the appurtenances, and became and was thereof possessed for the said several terms so to him thereof respectively granted as aforesaid.

And the said John Doe being so thereof possessed the said Richard Roe afterwards, to-wit, on the third day of January aforesaid, in the year aforesaid, with force and arms, to-wit, with guns and bills and swords and staves entered into said several lands and tenements firstly, secondly and thirdly above described, with the appurtenances, in which the said John Doe was so interested and of which he was so possessed in manner and form for the several terms aforesaid, which are not yet expired, and ejected him, the said John Doe, out of his said several farms and still keeps thereout the said John Doe so ejected as aforesaid, and other wrongs to the said John Doe then and there did to the great damage of said John Doe, and against the peace of the State of Ohio. Wherefore the said John Doe saith that he is injured and hath sustained damage to the value of five hundred dollars and therefore he brings his suit, etc.

HITCHCOCK, WILSON & WADE,
Plaintiffs' Attorneys.

John Den & Richard Fen, Pledges to Prosecute.

Notice.

Mr. Daniel Upson.

D'R SIR: I am informed that you are in possession of, or claim title to, the premises in this declaration mentioned or to some part thereof, and I, being sued in this action as a casual ejector only, and having no claim or title to the same, do advise you to
592 appear on the first day of the ensuing term in the Court of Common Pleas to be holden at Cleveland, within and for said County of Cuyahoga, on the eighteenth day of February, A. D. 1846, by some attorney of that court and then and there by rule of the same court to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession. Dated this sixth day of February, A. D. eighteen hundred and forty-six.

Your loving friend,

RICHARD ROE.

And afterwards, to-wit, on the twelfth day of February, eighteen hundred forty-eight, said defendant by its attorney filed in the office

THE CITY OF CLEVELAND, OHIO.

of the Clerk of said court the following consent rule and plea in this case, to-wit:

Consent Rule Plea.

JOHN DOE ex Demise of WILLIAM B. LLOYD and Others

vs.

CITY OF CLEVELAND.

And the said City of Cleveland come- and confesses the lease, entry and ouster in the said declaration mentioned and admits itself in possession of a parcel of land in Cleveland City, to-wit: Lots Nos. five, seven and eight as described in said plaintiffs' declaration, and being parcel of the premises described therein: And for plea, says, that it is not guilty of the trespass and ejectment in the said declaration alleged against it, and of this puts itself upon the Country, and the said John Doe doth the like.

S. WILLIAMSON,
Attorney for Defendant.

March T., 1848.

Con.

And afterwards, to-wit, at the next term of said court, begun and held at the Court House in Cleveland, in said Cuyahoga County, on the seventh day of March, eighteen hundred forty-eight, this cause was continued to the next term of said court.

June T., 1848.

Con.

And afterwards, to-wit, at the next term of said court, begun and held at the Court House in Cleveland, in said County, on the twentieth day of June, eighteen hundred forty-eight, this cause was continued on the defendant's motion and costs.

593

Oct. T., 1848.

Con.

And afterwards, to-wit, at the next term of said court, begun and held at the Court House in Cleveland, in said County, on the third day of October, eighteen hundred forty-eight, this cause was continued to the next term of said court.

March T., 1849.

Con.

And afterwards, to-wit, at the next term of said court, begun and held at the Court House in Cleveland, in said County, on the nine-

teenth day of March, eighteen hundred forty-nine, this cause was continued to the next term of said court.

June T., 1849.

Con.

And afterwards, to-wit, at the next term of said court, begun and held at the Court House in Cleveland, in said County, on the nineteenth day of June, eighteen hundred forty-nine, this cause was continued to the next term of said court.

Oct. T., 1849.

And afterwards, to-wit, at the next term of said court, begun and held at the Court House in Cleveland, in said County, on the second day of October, eighteen hundred forty-nine, by and before their Honors, Philemon Bliss, President Judge, Thomas M. Kelley, Quintus F. Atkins, and Benjamin Northrop, Associate Judges of said court, came the parties by their attorneys and submit the cause to the court, who on hearing find, that the defendant is guilty of the trespass in ejectment in manner and form as the plaintiffs have alleged against it, and they assess the plaintiffs' damages by reason of the premises to six cents.

Judgment.

Therefore it is considered that the plaintiffs recover of the defendant their term yet to come in the premises aforesaid, and also their damages and costs herein taxed at fifteen dollars and seventy cents. The defendant's costs are taxed at twenty-seven dollars and eighty-seven cents.

594 (Endorsed:) Lessee of Wm. B. Lloyd et al. vs. The City of Cleveland. Copy of Record.

THE STATE OF OHIO,
Cuyahoga County, ss:

I, Roland D. Noble, Clerk of the Court of Common Pleas, within and for said county, and in whose custody the Files, Pleadings, Journals and Records of said court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing copy of record is taken and copied from the records of the Proceedings of the Court of Common Pleas within and for said Cuyahoga County, and that said foregoing copy has been compared by me, with the original record and the same is a correct transcript therefrom.

In testimony whereof, I do hereunto subscribe my name officially and affix the Seal of said court at the Court House in the City of Cleveland, in said County, this 9th day of July, A. D. 1859.

[SEAL.]

ROLAND D. NOBLE, *Clerk.*

I, Thomas Bolton, Presiding Judge of the Court of Common Pleas, of the Third Subdivision of the Fourth Judicial District of the State of Ohio, in which subdivision is said County of Cuyahoga, do hereby certify that said Roland D. Noble was at the date of the above certificate, and now is, Clerk of said Court of Common Pleas, within and for said Cuyahoga County, and State of Ohio, and that said Clerk is the officer in whose custody the said original Files, Pleadings, Journals and Records are required to be kept by the laws of the State of Ohio, and that said attestation to said copy of said record is in due form of law.

Signed by me, and dated at Cleveland, Cuyahoga County, Ohio, this 9th day of July, A. D. 1859.

THOMAS BOLTON,
Judge as Aforesaid.

(Endorsed:) No. 3—R. Doe ex dem. Wm. B. Lloyd et al. vs. City of Cleveland. Record—Cuya. Co. Com. Pleas. Service Feb'y 27, 1846, Lots 5, 7 & 8 of Merchant. Judgt. Oct. T., 1849.

THE STATE OF OHIO,
Cuyahoga County, ss:

[SEAL.]

To the Sheriff of Cuyahoga County, Greeting:

Whereas, John Doe on the 2nd day of October, A. D. 1849, in our Court of Common Pleas within and for the County of Cuyahoga, by the judgment of the same court recovered against The City of Cleveland, his term then and yet to come of and in the following described lands and tenements, with the appurtenances, to wit: a parcel of land situate in the City of Cleveland and County
595 aforesaid (Cuyahoga) to-wit: Lot number six (6) of the survey and allotment made by Ahaz Merchant of a portion of the City of Cleveland and of which the plat and return was made to the City Council, February 4th, 1845: Said lot number six (6) being (20) twenty feet front on the Easterly Pier of the Harbor at the mouth of the Cuyahoga River by one hundred and twenty (120) feet in depth with the appurtenances, situate in Cleveland aforesaid situate and being in your bailiwick, which William B. Lloyd, Ellery G. Williams as Commissioner of Insolvents, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Jane E. Hayden, Caroline Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, on the 2nd day of January, 1845, had demised to the said John Doe and his assigns from the first day of January then last past for and during and unto the full end and term of ten years from thence next ensuing and fully to be complete and ended: And also, his term then and yet to come in other messuages described as follows, to-wit: A certain other parcel of land situate in said — of Cleveland and County aforesaid (Cuyahoga) and also situate in the survey or subdivision of part of said City of Cleveland made under the order of the City Council of said City, by Ahaz Merchant, Surveyor, and dated February 4th, 1845, and lot number six

(6) in said survey or subdivision being twenty (20) feet front on the East Pier of the Harbor and one hundred and twenty (120) feet deep with the appurtenances situate in Cleveland aforesaid situate and being in your bailiwick, which William B. Lloyd, John W. Allen, as Assignee in Bankruptcy of Albert M. Lloyd, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Caroline Hayden, Jane E. Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, on the 2nd day of January, 1845, had demised to the said John Doe to hold the same to the said John Doe and his assigns from the first day of January then last past for and during and until the full end and term of ten years from then next ensuing and fully to be completed and ended: And, also, his term then and yet to come of and in other messgages described as follows, to-wit: A certain other parcel of land situated in said City of Cleveland and County aforesaid (Cuyahoga) being on the easterly side of the Pier of the Harbor at the mouth of the Cuyahoga River in said City of Cleveland and known as lot number six (6) in the survey or subdivision of a part of said City of Cleveland made by Ahaz Merchant under the direction of the City Council of said City

the return of which is dated February 4th, 1845, and being 596 twenty (20) feet front and one hundred and twenty (120) feet deep with the appurtenances, situate in the City of Cleveland aforesaid situate and being in your bailiwick which William B. Lloyd, Albert M. Lloyd, Caroline Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Caroline Hayden, John E. Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, on the 2nd day of January, 1845, had demised to the said John Doe, to hold the same to the said John Doe and his assigns from the 1st day of January, then last past for and during and until the full end and term of ten years from then next ensuing and fully to be complete and ended; by virtue of which several demised, the said John Doe entered upon and into the said several lands and tenements with the appurtenances and was possessed thereof, until the said City of Cleveland afterwards, to-wit, on the 3rd day of January, A. D. 1845, with force and arms, &c., entered upon and into the said several lands and tenements with the appurtenances, which the said William B. Lloyd, Ellery G. Williams, as Commissioner of Insolvents, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Jane E. Hayden, Caroline Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden: William B. Lloyd, John W. Allen, as Assignee in Bankruptcy of Albert M. Lloyd, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Caroline Hayden, Jane E. Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden; William B. Lloyd, Albert M. Lloyd, Caroline Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Caroline Hayden, John E. Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, had respectively

demised to the said John Doe in manner and for the several terms aforesaid which were not then nor are yet expired and ejected the said John Doe from him said several terms, whereof the said City of Cleveland is convicted as appears to us of record.

Therefore we command you, that without delay you cause the said John Doe to have possession of his said several terms yet to come of and in the said several lands and tenements with the appurtenances; and in what manner you shall have executed our command in this behalf make appear to our said Court of Common Pleas at their next term: We also command you that of the goods and chattels and for the want thereof, then, of the lands and tenements

of the said City of Cleveland in your bailiwick, you cause to
597 be made the sum of six cents damages and thirteen dollars and sixty cents costs of suit, which the said John Doe, on the day and year first aforesaid, and by the judgment of the same court recovered against the said City of Cleveland, whereof the said City of Cleveland is also convicted as appears to us of record, with interest thereon from the 2nd day of October, A. D. 1849, and have you the said moneys before our said Court of Common Pleas at their said next term to render to the said John Doe and have you then there this writ.

Witness Robert F. Paine, Clerk of our said court at Cleveland this 25th day of August, A. D. 1851.

ROBERT F. PAINE, *Clerk*,
By ROLAND D. NOBLE, *Deputy*.

THE STATE OF OHIO,
Cuyahoga County, ss:

CLEVELAND, August 27th, 1851.

In obedience to the command of this writ, I have this day taken possession of the within described lands and tenements to-wit: Lot No. six (6) Survey and allotment made by Ahaz Merchant of a portion of the City of Cleveland and of which the plat and return was made to the City Counsel February 4th, 1845. Said Lot Number six (6) being (20) twenty feet front on the Easterly Pier of the harbor at the mouth of the Cuyahoga River by one hundred and twenty (120) feet in depth, and have delivered possession of the same up to Hezekiah Camp, he being Agent of Lessee of William B. Lloyd et al. for the plaintiffs' term yet to come.

Sheriff Fees.

Service with aid of County.....	\$3.00
Expense accrued in moving coal & goods &c.....	24.00
Mileage20
Writing writ.....	.20

\$27.40

A. H. BRAINARD, *Sheriff*.
B. L. WIGGINS, *Dept.*

(Endorsed:) 17—121. "53"—132. Lessee of Wm. B. Lloyd et al. vs. The City of Cleveland. Al. Habere Facias et Fi. Fa.

	Damages	\$100.06
598	Costs	13.60
		<hr/>
		\$13.66
	Deft's Costs.....	2.31
	Clerks, inc. costs.....	4.35
	Sheriffs, inc. costs.....	.82

Int. fr. Oct. 2, 1849.

Damages taxed costs and interest \$17.62 paid April 23, 1850.

Copy.

HITCHCOCK, WILSON & WADE,
Attorneys for Plaintiffs.

THE STATE OF OHIO,
Cuyahoga County, ss:

I, Roland D. Noble, Clerk of the Court of Common Pleas, within and for said county, and in whose custody the Files, Pleadings, Journals and Records of said court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing copy of record is taken and copied from the Records of the Proceedings of the Court of Common Pleas within and for said Cuyahoga County, and that said foregoing copy has been compared by me, with the original record, and that the same is a correct transcript therefrom.

In testimony whereof, I do hereunto subscribe my ———.

I, Thomas Bolton, Presiding Judge of the Court of Common Pleas, of the Third Subdivision of the Fourth Judicial District of the State of Ohio, in which subdivision is said County of Cuyahoga, do hereby certify that said Roland D. Noble was at the date of the above certificate, and now is, Clerk of said Court of Common Pleas, within and for said Cuyahoga County, and State of Ohio, and that said Clerk is the officer in whose custody the said original Files, Pleadings, Journals and Records are required to be kept by the laws of the State of Ohio, and that said attestation to said copy of said record is in due form of law.

Signed by me, and dated at Cleveland, Cuyahoga County, Ohio, this 9th day of July, A. D. 1859.

THOMAS BOLTON,
Judge as Aforesaid.

(Endorsed:) No. 6—R. Ex dem. Wm. B. Lloyd, E. G. Williams vs. City of Cleveland. Writ of restitution of Lot No. 6 Merchant's Survey Executed Aug. 27th, '51.

599 THE STATE OF OHIO,

[SEAL.]

Cuyahoga County, ss:

To the Sheriff of Cuyahoga County, Greeting:

Whereas, John Doe on the 2nd day of October, A. D. 1849, in our Court of Common Pleas within and for the County of Cuyahoga, by the judgment of the same court recovered against The City of Cleveland, his term then and yet to come of and in the following described lands and tenements, with the appurtenances, to-wit: A parcel of land situate in the City of Cleveland and County aforesaid (Cuyahoga) to wit: lot- numbers five (5), seven (7), and eight (8) of the survey and allotment of a part of the City of Cleveland made and returned by Ahaz Merchant by the direction of said City of Cleveland which plan and return is dated February 4th, 1845, and which lots front on the Eastern Pier of the Harbor at the mouth of the Cuyahoga River in the City of Cleveland and County aforesaid, being each twenty (20) feet front, and one hundred and twenty (120) feet deep each, with the appurtenances, situate in Cleveland aforesaid situate and being — your bailiwick, which William B. Lloyd, Ellery G. Williams, as Commissioner of Insolvents, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Jane E. Hayden, Caroline Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, on the 2nd day of January, 1845, had demised to the said John Doe and his assigns from the first day of January then last past for and during and unto the full end and term of ten years from thence next ensuing and fully to be completed and ended: And, also, his term then and yet to come in other messuages described as follows, to-wit: A certain other parcel of land situate in said City of Cleveland and County aforesaid (Cuyahoga) and situate also in the survey and allotment of part of the City of Cleveland made by Ahaz Merchant under the direction of the City Council February 4th, 1845, and known as lots No. five (5), seven (7) and eight (8) in said survey made of said lots fronting on the Eastern Pier of the Harbor at the mouth of the Cuyahoga River and each being twenty (20) feet front and one hundred and twenty (120) feet deep with the appurtenances situate in Cleveland aforesaid situate and being in your bailiwick, which William B. Lloyd, John W. Allen, as Assignee in Bankruptcy of Albert M. Lloyd, Caroline Lloyd, Abigail P. Lloyd, Rosella Lloyd, Delia Ann Lloyd, John Henry Lloyd, Caroline Hayden, Jane E. Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, on the 2nd day of January, 1845, had demised to the said John Doe to hold the same to the said John Doe and his assigns from the first day of

600 January then last past for and during and until the full end and term of ten years from then next ensuing and fully to be complete and ended: And, also, his term then and yet to come of and in other messuages described as follows, to-wit: A certain other parcel of land situated in said City of Cleveland and County aforesaid (Cuyahoga) and lying on the Easterly side of the pier

of the Harbor at the mouth of the Cuyahoga River in said City of Cleveland and known as lots number five (5), seven (7) and eight (8) of the survey and allotment of part of the City of Cleveland made and returned by Ahaz Merchant, by the direction of the City of Cleveland, which plan and return is dated February 4th, 1845, and which lots are each twenty (20) feet front and one hundred and twenty (120) feet deep with the appurtenances, situate in the City of Cleveland aforesaid situate and being in your bailiwick which Wm. B. Lloyd, Albert M. Lloyd, Caroline Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Caroline Hayden, John E. Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden, on the 2nd day of January, 1845, had demised to the said John Doe, to hold the same to the said John Doe and his assigns from the 1st day of January then last past for and during and until the full end and term of ten years from thence next ensuing and fully to be complete and ended; by virtue of which several demises, the said John Doe entered upon and into the said several lands and tenements with the appurtenances and was possessed thereof, until the said City of Cleveland afterwards, to-wit, on the 3rd day of January, A. D. 1845, with force and arms, &c., entered upon and into the said several lands and tenements with the appurtenances, which the said William B. Lloyd, Ellery G. Williams, as Commissioner of Insolvents, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Jane E. Hayden, Caroline Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden;—William B. Lloyd, John W. Allen, as Assignee in Bankruptcy of Albert M. Lloyd, Caroline Lloyd, Abigail P. Lloyd, Rosella Lloyd, Delia Ann Lloyd, John Henry Lloyd, Caroline Hayden, Jane E. Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden and Thomas L. Hayden; and William B. Lloyd, Albert M. Lloyd, Caroline Lloyd, Rosella Lloyd, Delia Ann Lloyd, Abigail P. Lloyd, John Henry Lloyd, Caroline Hayden, John E. Hayden, Mary Hayden, Rosella Hayden, Ann Hayden, Margaret Hayden, Sarah Hayden
 601 and Thomas L. Hayden, had respectively demised to the said John Doe in manner and for the several terms aforesaid which were not then nor are yet expired and ejected the said John Doe from his said several terms, whereof the City of Cleveland is convicted as appears to us of record.

Therefore we command you, that without delay you cause the said John Doe to have possession of his said several terms yet to come of and in the said several lands and tenements with the appurtenances; and in what manner you shall have executed our command in this behalf make appear to our said Court of Common Pleas at their next term: We also command you that of the goods and chattels and for the want thereof, then, of the lands and tenements of the said City of Cleveland in your bailiwick, you cause to be made the sum of six cents damages and fifteen dollars and seventy cents costs of suit, which the said John Doe, on the day and year first aforesaid, and by the judgment of the same court re-

covered against the said City of Cleveland, whereof the said City of Cleveland is also convicted as appears to us of record, with interest thereon from the 2nd day of October, A. D. 1849, and have you the said moneys before our said Court of Common Pleas at their said next term to render to the said John Doe and have you then there this writ.

Witness Robert F. Paine, Clerk of our said Court at Cleveland, this 24th day of March, A. D. 1851.

ROBERT F. PAINE, *Clerk*,
By ROLAND D. NOBLE, *Deputy*.

THE STATE OF OHIO.

Cuyahoga County, ss:

CLEVELAND, April 24th, 1851.

In obedience to the command of this writ, I have this day taken possession of a portion of the within described lands (to-wit):

A parcel of land situated in the City of Cleveland and county aforesaid (Cuyahoga) (to-wit) lot number five (5) of the survey and allotment of a part of the City of Cleveland made and returned by Ahaz Merchant by the direction of the said City of Cleveland which plan and return is dated February 4th, 1845, and have delivered the possession of the same up to Hezekiah Camp agent for plaintiff William B. Lloyd et al. and returned without further service by order of plaintiffs' agent.

Sheriff's Fees.

Service:

With aid	\$2.00
Mileage10
602 Writing R.10
	<hr/>
	\$2.20

A. H. BRAINARD, *Sheriff*.
B. L. WIGGIN, *Dept.*

(Endorsed:) 17—120 "52"—115. Lessee of Wm. Lloyd et al. vs. The City of Cleveland, Alias Habere Facias et Fi. Fa.

Damages	\$00.06
Costs	15.70
	<hr/>
	\$15.76
Def'ts costs	27.87
Clerk's inc.	4.35
Sh'ff's inc.	1.40
Int. fr. Oct. 2, 1849.	
Damages and taxed costs and int.	\$46.10

Paid April 23, 1850

HITCHCOCK, WILSON & WADE,
Plaintiffs' Attorneys.

Copy.

THE STATE OF OHIO,
Cuyahoga County, ss:

I, Roland D. Noble, Clerk of the Court of Common Pleas, within and for said county, and in whose custody the Files, Pleadings, Journals and Records of said court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing copy of record is taken and copied from the Records of the Proceedings of the Court of Common Pleas within and for said Cuyahoga County, and that said foregoing copy has been compared by me, with the original record, and that the same is a correct transcript therefrom.

In testimony whereof, I do hereunto subscribe my name officially, and affix the Seal of said court at the Court House in the City of Cleveland, in said County, this 9th day of July, A. D. 1859.

[SEAL.]

ROLAND D. NOBLE, *Clerk.*

I, Thomas Bolton, Presiding Judge of the Court of Common Pleas, of the Third Subdivision of the Fourth Judicial District of the State of Ohio, in which subdivision is said County of
603 Cuyahoga, do hereby certify that said Roland D. Noble was at the date of the above certificate, and now is, Clerk of said Court of Common Pleas, within and for said Cuyahoga County, and State of Ohio, and that said Clerk is the officer in whose custody the said original Files, Pleadings, Journals and Records are required to be kept by the laws of the State of Ohio, and that said attestation to said copy of said record is in due form of law.

Signed by me, and dated at Cleveland, Cuyahoga County, Ohio, this 9th day of July A. D. 1859.

THOMAS BOLTON,
Judge as Aforesaid.

(Endorsed:) No. 4—R. Doe ex dem. of Heirs Thos. Lloyd vs. City of Cleveland. Writ of possession for Lots 5, 7, 8 possession Delivered Apl. 24, 1851.

And further to maintain the issues on their part, defendants The Cleveland and Pittsburgh Railroad Company and the Pennsylvania Company, offered in evidence Record in Appropriation Proceedings begun in the Common Pleas Court of Cuyahoga County, April 15, 1851, by The Cleveland and Pittsburgh Railroad Company against Thomas S. Harback et al., recorded in record of Railroad Appraisals, page 244. A true copy of same is as follows, to-wit:

THE STATE OF OHIO,
Cuyahoga County, ss:

Court of Common Pleas.

THE CLEVELAND AND PITTSBURGH RAILROAD COMPANY, Plaintiff,
vs.

THOMAS S. HARBACK, HEZEKIAH CAMP, HARRIET HARBACK,
John G. Herrick, Guardian of Maria Louisa Harback, Thomas
S. Harback, and Harriet Harback, Guardian of Thomas Harback,
Defendants.

Petition.

Be it remembered that heretofore to-wit on the 15th day of April
A. D. 1851, the Cleveland and Pittsburgh Railroad Company in
pursuance of the Statute in such cases made and provided filed in
the office of the Clerk of the Superior Court of Cleveland in
604 and for the County of Cuyahoga and State of Ohio, an in-
strument of appropriation made in the words and figures
following, viz:

THE STATE OF OHIO,
Cuyahoga County, ss:

To all people to whom these presents may come, Greeting:

Whereas the Cleveland and Pittsburgh Railroad Company by
order of the Board of Directors, for the purpose of constructing
thereon their railroad necessary side tracks, depots, work shops and
water tanks or stations, have entered upon the following described
land (covered with water) situated in the State of Ohio, County
of Cuyahoga and bounded as follows: Beginning at a point on the
west line of Water street (in the City of Cleveland) produced or
extended five hundred and fifty feet northerly from the south line
of Bath street in said City thence westerly to the center line of
Spring street (in said City) produced or extended on a line parallel
with said south line of said Bath street, thence northwesterly on said
center line of said Spring street produced or extended three thou-
sand feet, thence easterly on a line parallel with said south line of
said Bath street to the west line of said Water street produced or
extended; thence southerly on said west line of Water street pro-
duced or extended to the place of beginning which said premises are
in the possession, under a claim of the legal or equitable title
thereto, of Thomas S. Harback (who resides without said County
of Cuyahoga and State of Ohio) in his own right and as Guardian
of Thomas Harback, Hezekiah Camp of Cleveland, in said County
of Cuyahoga in his own right, Harriet L. Harback who resides with-
out said County of Cuyahoga and State of Ohio, in her own right
and as Guardan in conjunction with said Thomas S. of said Thomas
Harback, John G. Herrick who resides without said County of
Cuyahoga and State of Ohio, as Guardian of Maria Louisa Harback,
said Hezekiah claiming to hold the legal and equitable title to one

equal undivided fourth part of said premises, and to be the beneficial or equitable owner of another equal undivided fourth part of said premises said Thomas S. Harriet L. Thomas and Maria Louisa Harback claiming to be the legal and beneficial owners of one equal undivided half of said premises and the legal owners of one equal undivided fourth part of said premises in trust for said Hezekiah the said Hezekiah in his own right the said Harriet S. in her own right and as Guardian of said Thomas—Thomas S. in his own right and as Guardian of said Thomas; and John G. Herrick as Guardian of said Maria Louisa Harback, but who, in fact are the legal or beneficial owners of said premises is unknown to said Company or any of their Directors. Now, therefore, know ye that the Cleveland & Pittsburgh Railroad Company by order of their Board
605 of Directors, have appropriated, and do hereby appropriate the above described premises for the purpose of constructing their railroad necessary side tracks, depots, work houses, water tanks or stations upon and across the same and with the intention of using the land appropriated as aforesaid for all purposes appertaining to said railroad. In witness whereof said Railroad Company by order of their Board of Directors have hereunto set their seal the fifteenth day of April A. D. eighteen hundred and fifty-one.

[SEAL.]

ZALMON FITCH,
Pres. pro Tem.

SAM'L FOLJAMBE, *Secretary.*

THE STATE OF OHIO,
Cuyahoga County, ss:

And afterwards to-wit on the eighteenth day of June in the year of our Lord one thousand and eight hundred and fifty-one same the said Cleveland and Pittsburgh Railroad Company and filed their petition in the said Superior Court of Cleveland, which petition was in the words and figures following to-wit:

To the Honorable Sherlock J. Andrews, Judge of the Superior Court of Cleveland in and for the County of Cuyahoga and State of Ohio:

The petition of the Cleveland and Pittsburgh Railroad Company humbly sheweth that said company by order of their Board of Directors on the fifteenth day of April A. D. 1851 executed an Instrument of appropriation of which the following is a correct copy, to-wit:

THE STATE OF OHIO,
Cuyahoga County, ss:

To all people to whom these presents shall come, Greeting:

Whereas the Cleveland and Pittsburgh Railroad Company by order of their Board of Directors, for the purpose of constructing thereon their railroad, necessary side tracks, depots, work shops, water tanks or stations have entered upon the following described

land (covered with water) situated in the State of Ohio, County of Cuyahoga, and bounded as follows: Beginning at a point on the west line of Water street (in the City of Cleveland) produced or extended five hundred and fifty feet northerly from the south line of Bath street in said City, thence westerly to the center line of Spring street in said City produced or extended on a line parallel with said south line of said Bath street, thence northwesterly on said center line of said Spring street produced or extended three thousand feet, thence easterly on a line parallel with said South line of Bath street to the west line of said Water street produced or extended, thence southerly on said west line of Water street produced or extended to

the place of beginning which said premises are in the possession under a claim of the legal or equitable title thereto of

606 Thomas S. Harback (who resides without said County of Cuyahoga and State of Ohio), in his own right and as Guardian of Thomas Harback, Hezekiah Camp of Cleveland in said County of Cuyahoga in his own right, Harriet L. Harback (who resides without said County of Cuyahoga and State of Ohio) in his own right and as Guardian in conjunction with said Thomas S. of said Thomas Harback, John G. Herrick, (who resides without said County of Cuyahoga and State of Ohio) as Guardian of Maria Louisa Harback. Said Hezekiah claiming to hold the legal and equitable title to one equal undivided fourth part of said premises, and to be the beneficial or equitable owner of another equal undivided fourth part of said premises. Said Harriet L. Thomas S. Thomas and Maria Louisa Harback claiming to be the legal and beneficial owners of one equal undivided half of said premises, and the legal owners of one equal undivided fourth part of said premises in trust for said Hezekiah the said Hezekiah in his own right—the said Harriet L. in her own right and as Guardian of said Thomas, Thomas S. in his own right and as Guardian of said Thomas, and John G. Herrick as Guardian of said Maria Louisa Harback, but who in fact are the legal or beneficial owners of said premises is unknown to said company or any of their directors. Now, therefore, Know Ye: That the Cleveland and Pittsburgh Railroad Company by order of their Board of Directors have appropriated and do hereby appropriate the above described premises for the purpose of constructing their railroad, necessary side tracks, stations, depots, work houses, water tanks, or stations upon and across the same and with the intention of using the land appropriated as aforesaid for all purposes appertaining to said railroad. In witness whereof said railroad company by order of their Board of Directors have hereunto set their seal the fifteenth day of April A. D. eighteen hundred and fifty-one.

[L. s.]

ZALMON FITCH,

Pres. pro Tem.

SAMUEL FOLJAMBE, *Secretary.*

And your petitioners further state that they filed said instrument of appropriation in the office of the Clerk of said Superior Court of Cleveland in the County first aforesaid, on said fifteenth day of April, 1851; that on the 16th day of April 1851, they delivered to

said Hezekiah Camp part owner of said premises, a copy of said instrument of appropriation, and that immediately thereafter, to-wit, commencing on the tenth day of May, 1851, your petitioner caused a notice (a copy of which is hereto attached) to be published in The True Democrat, a paper in general circulation in said County of Cuyahoga and State of Ohio, reciting the substance of such instrument of appropriation for more than three weeks next ensuing; which notice was in the words and figures following, to-wit: Notice is hereby given to John G. Herrick, Thomas S. Harback, Harriet L. Harback, Thomas Harback, Maria Louisa Harback and all other persons bodies politic or corporate, having or claiming to have any right, title to or interest in the following described land (covered with water) situate in the County of Cuyahoga and State of Ohio, and bounded as follows:

Beginning at a point on the west line of Water street in the City of Cleveland produced or extended five hundred and fifty feet northerly from the south line of Bath street in said city, thence westerly on a line parallel with said south line of Bath street to the center line of Spring street in said City produced or extended, thence north-westerly on the center line of said Spring street, produced or extended three thousand feet, thence easterly on a line parallel with said south line of Bath street to the west line of said Water street produced or extended, and thence southerly on said west line of Water street to the place of beginning—that the Cleveland and Pittsburgh Railroad Company by order of their Board of Directors on the fifteenth day of April, 1851, appropriated the above described premises for the purpose of constructing thereon their railroad, necessary side tracks, depots, work shops, and water tanks, or stations and that on the same day, an instrument of appropriation of said premises, describing the same as above set forth for the purpose aforesaid, was filed in the Clerk's office of the Superior Court of Cleveland. Said instrument of appropriation also sets forth that said premises are in the possession under a claim of the legal or equitable title thereto of Thomas S. Harback, who resides without said County of Cuyahoga, in his own right, and as Guardian of Thomas Harback, Hezekiah Camp of Cleveland in said county in his own right; Harriet L. Harback who resides without said County of Cuyahoga in her own right and as Guardian of said Thomas Harback, John G. Herrick, who resides without said County of Cuyahoga as Guardian of Maria Louisa Harback; said Hezekiah claiming to hold the legal or equitable title to one equal undivided fourth part of said premises; said Harriet L. Thomas S. Thomas and Maria Louisa Harback claiming to be the legal and beneficial owners of one equal undivided half of said premises, and the legal owners of one equal undivided fourth part of said premises in trust for

608 said Hezekiah; said Hezekiah in his own right, said Harriet L. in her own right, and as Guardian of said Thomas said Thomas L. in his own right, and as Guardian of said Thomas; and John G. Herrick as Guardian of said Maria Louisa Harback. Said Instrument of Appropriation further sets forth that neither said

company or any of their directors know who in fact are the legal or beneficial owners of said premises.

CYRUS PRENTISS, *Pres.*

SAMUEL FOLJAMBE, *Secretary.*

WILLIAM- & CARY, *Attorneys.*

Your petitioners therefore pray your Honor to appoint three disinterested freeholders residents of said County of Cuyahoga, appraisers, and that you issue to them a warrant requiring them, after having been duly sworn, to appraise the premises aforesaid, according to the provisions of the charter of your petitioners and the law of the land.

THE CLEVELAND & PITTSBURGH
RAILROAD COMPANY,

By WILLIAMS & CARY,

Their Attorneys.

June 16th, 1851.

And thereupon said Cleveland and Pittsburgh Railroad Company by its attorneys moved for the appointment of a committee to appraise the damage done the said Thomas S. Harback and others, the owners of certain lands and materials appropriated by said company as set forth in said petition as presented aforesaid; and said judge appointed George Hoadley, Orlando Cutter, and Ahimaz Sherman, Esqs. such committee, and issued a warrant accordingly, which warrant was in the words and figures following, to-wit:

THE STATE OF OHIO,

Cuyahoga County, ss:

To George Hoadley, Orlando Cutter and Ahimas Sheriman, Esqs., three disinterested freeholders of said County:

Whereas the Cleveland and Pittsburgh Railroad Company on the fifteenth day of April, A. D. 1851, filed in the office of the Clerk of the Superior Court of Cleveland in and for said County of Cuyahoga and State of Ohio, an instrument of appropriation, of which the following is a copy, to-wit:

THE STATE OF OHIO,

Cuyahoga County, ss:

To all people to whom these presents shall come, Greeting:

Whereas the Cleveland and Pittsburgh Railroad Company by order of their Board of Directors for the purpose of constructing thereon their railroad, necessary side tracks, depots, work shops, and water tanks and stations have entered upon the following described land (covered with water) situated in the State of Ohio, County of Cuyahoga and bounded as follows, beginning at a point in
609 the west line of Water street (in the City of Cleveland) produced or extended five hundred and fifty feet northerly from the south line of Bath street in said City, thence westerly to the center line of Spring street (in said city) produced or extended on

a line parallel with said south line of said Bath street, thence northwesterly on said center line of said Spring street produced or extended three thousand feet, thence easterly on a line parallel with said south line of said Bath street, to the west line of said Bath street produced or extended, thence southerly on said west line of Water street produced or extended, to the place of beginning which said premises are in the possession under a claim of the legal or equitable title thereto of Thomas S. Harback who resides without said County of Cuyahoga and State of Ohio, in his own right and as Guardian of Thomas Harback, Hezekiah Camp of Cleveland in said County of Cuyahoga in his own right, Harriet L. Harback, who resides without said County of Cuyahoga and State of Ohio in her own right and as Guardian in conjunction with said Thomas S. of said Thomas Harback. John G. Herrick (who resides without said County of Cuyahoga and State of Ohio) as Guardian of Maria Louisa Harback. Said Hezekiah claiming to hold the legal or equitable title to one equal undivided fourth part of said premises, and to be the beneficial or equitable owner of another equal undivided fourth part of said premises. Said Harriet L. Thomas S. Thomas and Maria Louisa Harback claiming to be the legal and beneficial owners of one equal undivided half of said premises, and the legal owners of one equal undivided fourth part of said premises in trust for said Hezekiah, the said Hezekiah in his own right, the said Harriet L. in her own right and as Guardian of said Thomas—Thomas S. in his own right and as Guardian of said Thomas and John G. Herrick as Guardian of said Maria Louisa Harback, but who in fact are the legal or beneficial owners of said premises is unknown to said company or any of their Directors. Now, therefore, know Ye: That the Cleveland and Pittsburgh Railroad Company by order of their Board of Directors have appropriated and do hereby appropriate the above described premises for the purpose of constructing their railroad, necessary side tracks, stations, depots, work houses, and water tanks upon and across the same and with the intention of using the land appropriated as aforesaid for all purposes appertaining to said railroad. In witness whereof said Railway Company by order of their Board of Directors have hereunto set their seal the fourteenth day of April eighteen hundred and fifty-one.

[L. s.]

ZALMON FITCH,

Pres. pro Tem.

SAMUEL FOLJAMBE, *Secretary.*

610 And it appearing to the undersigned Sherlock J. Andrews,

Judge of the said Superior Court of Cleveland, that said Cleveland and Pittsburgh Railroad Company have delivered to said Hezekiah Camp a copy of said instrument of appropriation and have caused to be published in the True Democrat, a paper in general circulation in said county an advertisement reciting the substance of such instrument of appropriation for three weeks subsequent to such appropriation, therefore upon the application of said Railroad Company you the said George Hoadley, Orlando Cutter, and Ahimaz Sherwin are appointed by the undersigned appraisers to appraise the

damage which the owners of the land aforesaid may sustain by reason of such appropriation and after having been duly sworn, you shall consider the benefit as well as the injury which the owners will sustain by reason of such appropriation and you shall forthwith return your assessment of damages to the Clerk of said court setting forth the value of the property taken as aforesaid the amount of benefit conferred upon the owners and the difference between the value of or damage done to the property taken, which you assess to such owners separately; all of which you shall in no wise omit. Witness my hand and seal this 17th day of June A. D. eighteen hundred and fifty-one.

S. J. ANDREWS,

Judge of the Superior Court of Cleveland.

And thereupon on the said day of June eighteen hundred and fifty-one said George Hoadley, Orlando Cutter and Ahimaz Sherwin took the oath prescribed by said act which oath was in the words and figures following, to-wit:

STATE OF OHIO.

Cuyahoga County, ss:

CLEVELAND TOWNSHIP, June, 1851.

Personally appeared George Hoadley, Orlando Cutter and Ahimaz Sherwin and were severally sworn to appraise the value of, or damage done to the property described in the foregoing order, and to take into consideration the benefits conferred as well as the damages sustained by the owner thereof and to make assessment and return thereof in the manner required by the foregoing order. Before me,

JAS. D. CLEVELAND,

Justice of the Peace of Cleveland Township.

And afterwards, to-wit, on the eighteenth day of June, eighteen hundred and fifty-one said George Hoadley, Orlando Cutter and Ahimaz Sherwin returned to the office of the Clerk of said Superior Court of Cleveland and filed therein their appraisal which appraisal was in the words and figures following, to-wit: We, the undersigned appraisers named in the foregoing order having been duly sworn and having viewed the property described in the foregoing order do appraise the same at the value of five thousand and ten dollars. We, appraise the damages which the owners thereof will sustain by reason of the appropriation thereof to the purposes of said railroad at five thousand and ten dollars. We, appraise the benefits conferred upon the owners by reason of said railroad at nothing. We assess the difference between the said value of said damages and said benefits at five thousand and ten dollars. And we assess such difference between the said value or said damages and said benefits, being five thousand and ten dollars, to the owners of said property separately as follows, to-wit: To Thomas S. Harback, Harriet L. Harback, Thomas Harback and Maria Louisa Harback, two thousand five hundred dollars. To Hezekiah Camp two thou-

sand five hundred dollars. And to Unknown Owners ten dollars. Which is respectively returned by us. Given under our hands this eighteen day of June A. D. eighteen hundred and fifty-one.

O. CUTTER,
A. SHERWIN,
GEO. HOADLEY, *Appraisers.*

THE STATE OF OHIO,
Cuyahoga County, ss:

At the May term of the Superior Court of Cleveland to wit on the fourth day of June A. D. eighteen hundred and fifty one came the Cleveland and Pittsburgh Rail Road Company and filed in said Court a certain contract which contract was in the words and figures following, to wit: This Indenture made this thirteenth day of September in the year of our Lord eighteen hundred and forty nine by and between the City of Cleveland, by F. W. Bingham Mayor of said City thereunto duly authorized by resolution of the City Council of said City party of the first part and the Cleveland, Columbus and Cincinnati Rail Road Company by John M. Woisey Vice President thereof, thereunto duly authorized by resolution of the Board of Directors of said Company party of the second part. Witnesseth, that said City of Cleveland in consideration of the sum of Fifteen thousand Dollars received by said Rail Road Company in the Capital Stock of said Company for which a certificate of one hundred and fifty shares of one hundred dollars each, full paid of said stock, — hereto been issued to said City the receipt of which is hereby acknowledged, and also in consideration of the covenants of said Rail Road Company hereafter contained. Hath granted and by these presents doth grant to said Rail Road Company as
612 fully and absolutely as said City or the constituted authorities thereof have the power or legal authority so to do, the right to the full and perpetual use and occupancy for their Rail Road tracks turnouts, engine and car and passenger houses, turn tables, water tanks, or stations, avenues from and to the same being open spaces between when deemed expedient and other purposes connected with and necessary for the convenient use and working of said Road all of Bath Street in said City of Cleveland situated northwardly of a line drawn parallel with the southerly line of Bath Street and one hundred and thirty two feet northwardly at right angles therefrom, excepting and reserving therefrom a piece or parcel bounded southerly by the last described line eastwardly by a line drawn parallel with the westerly face of the Stone Pier (so called) and one hundred (100) feet eastwardly therefrom and northwardly by a line drawn parallel with the south line of Bath street and two hundred and eighty two (282) feet northwardly therefrom which is reserved for public use as a part of Bath Street and also reserving and excepting therefrom a strip of twenty five feet in width bounded westerly by the west face of said Pier and Eastwardly by a line parallel therewith and twenty five feet therefrom and extending from the northerly line of said

last described parcel of land alongside a pier to the northwardly end thereof as it is now or may be hereafter extended, which is to be kept open as a public highway, and shall not be obstructed by said City or by any person or persons or company claiming through said City or by their permission. To have and to hold the same to the said Rail Road Company, its successors and assigns upon the terms and subject to the stipulations and conditions following, that is to say: Said company shall hold and take the same subject to all legal claims either in law or equity of any person or persons company or companies, it being expressly understood, that the city does not guarantee or warrant either the title or the right to occupy the same the said Rail Road Company to have all the money compensation interest, benefits and rights which the City could in any manner be entitled to on account thereof, said Company shall save said City harmless from all damages to persons holding any part or parts of the premises under leases from the City, consequently upon the taking possession of the ground so leased or in any way depriving them of the full enjoyment of their leasehold interest before the expiration thereof it being understood that this indemnification is to extend to such damages only as the City shall be legally holden to make good to the claimants thereof. The leases made by said City of parts of said premises shall be assigned to said Company, said Company to have the right to collect and receive the rents

hereafter accruing and shall pay over to said City two thirds
613 of all rents collected on land fronting on the river lying between the south line of Bath Street and a line parallel therewith and 282 feet northwardly therefrom until said Company shall deliver to said City the possession of said strip 100 feet in width next the pier hereinbefore reserved. And said Company shall not renew or extend said leases, nor grant any new lease of any part of the premises, which will interfere with the opening of Bath Street to the width of 132 feet or of the extension thereof on and near the Stone Pier as hereinbefore described. The said Company shall not lease any part of the premises to any person or persons, company or companies to be used for constructing or carrying on forwarding Storage or Commission business or for the erection of warehouse thereon, for the accommodation of such business nor shall said Company use said premises or any part thereof for the purpose of engaging in accommodating or aiding in the transaction of forwarding, commission or warehousing business, with a view either directly or indirectly of deriving profits therefrom, nor shall they grant the right to any Rail Road Company person or persons or other Company or Companies so to do. But the prohibition shall not be construed to prevent said Rail Road Company from erecting on said premises a suitable warehouse or warehouses for the reception and safe keeping of such articles of property as may be intrusted to their care for transportation and not consigned to any person or persons or company in Cleveland having the means of storing the same. It being the object and interest of the parties to this agreement to provide that said premises shall not be used to interfere or come into competition with in-

dividuals companies or firms engaged in forwarding commission, storage, or warehousing business in Cleveland by carrying on or engaging in by said Company accommodating or aiding in forwarding Commission, storage, warehousing or other business not necessary to secure the transportation of property over their Railroad, but may be used by said Company for all purposes necessary for the convenient and profitable working of their Road subject to the restriction aforesaid. Said Company to take and hold said land subject to all the legal rights and claims of the Cleveland and Pittsburgh Rail Road Company upon the same and to have all the benefit to accrue from said claimants as is before provided, and as a further provision for the same shall upon reasonable equitable terms extend to said Cleveland and Pittsburgh Rail Road Company and the Cleveland, Painesville and Ashtabula Rail Road Company, room for warehouse and passenger depots and such facilities for coming on to the said premises, with their cars, engines and tenders

for the receptions and delivery of passengers, baggage and
614 freight subject to the same restrictions as to warehousing, forwarding and commission business as are herein imposed upon The Cleveland, Columbus and Cincinnati Rail Road Company and for transferring them to or receiving them from other Rail Roads or from Steam Boats either by independent tracks or by the use of tracks laid by the Cleveland, Columbus & Cincinnati R. R. Co., as shall be found most convenient to all concerned, and in case the parties cannot agree either as to the terms or manner of occupying such part of the premises as may be so required, the same shall be determined by three competent disinterested men, one to be chosen by each party and the third by the — so chosen. It being however understood that the Cleveland, Columbus and Cincinnati Rail Road Company shall not be bound to permit either of said Rail Road Companies to use for car, engine, or warehouses, on grounds on which to place or dispose of cars, engines, tenders or other furniture of their Roads any parts of said premises, which said arbitrators shall decide is necessary for the purposes to be used exclusively by said Cleveland, Columbus and Cincinnati R. R. Co. It being further understood and agreed that no part of said premises shall after two years from this date be used by said Cleveland, Columbus and Cincinnati R. R. Co. for forges, furnaces, workshops and anything of a similar character for the manufacture of cars, engines or other machinery so as to deprive either said other R. R. Companies of the full benefit of the use of part of said premises intended by this agreement to be extended to them. Said Cleveland, Columbus & Cincinnati Railroad Co. shall manage and take care of suits and action- now pending, or which may hereafter be commenced for obtaining possession of said premises or any part thereof and may compromise or settle such suits. And said Company shall save said City harmless from all costs and charges on account thereof except as have already accrued against the City and in case of settlement shall save the City harmless from all legal costs in the case in Court in Bank except the costs made by the City. And shall further save the City harmless from all

legal claims or demands which are now or may hereafter be set up against the city growing out of the use or occupation of said premises by said City or its tenants or lessees. And to enable said company to compromise and settle with the claimants Lloyd and Camp and all other claimants for the extinguishments of their claims to said premises or any part thereof, they may allow them to retain such portion thereof as may be necessary to effect such settlement and as shall not be deemed necessary for Rail Road purposes and the said Cleveland, Columbus and Cincinnati Rail

615 Road Company doth hereby covenant and agree to and with said City that said Company will hold said premises upon the terms and subject to the stipulations and conditions herein recited and will do and perform all and singular the acts required and abstain from doing and performing all and singular the acts prohibited by the terms and stipulations herein recited.

In witness whereof the City Council of said City of Cleveland have caused to be hereunto affixed the seal of said City *with* these presents to be subscribed by the Mayor thereof. And the Cleveland, Columbus & Cincinnati Rail Road Company have caused to be hereunto affixed their corporate seal and these presents to be subscribed by their Vice President the day and year first above written.

THE CITY OF CLEVELAND,
By F. W. BINGHAM, *Mayor*. [L. s.]

Signed in the presence of—
JAS. D. CLEVELAND.
D. W. CROSS.

THE CLEVELAND, COLUMBUS
AND CINCINNATI RAIL ROAD
COMPANY,
By JOHN M. WOOLSEY,
Vice President. [L. s.]

Said defendants the Cleveland & Pittsburgh Railroad Company and the Pennsylvania Company, also offered, as part of the Record of said appropriation Proceedings, the agreement made October 9, 1849, by and between Frederick Harback and Hezekiah Camp.

Mr. BAKER: The Court will understand that this is an agreement between Frederick Harback and Hezekiah Camp.

Mr. BOYLE: Both made parties to this action.

The COURT: Hezekiah Camp was associated first with Lloyd, who had that title.

Mr. BAKER: It is the same Camp. This is a month after the contract between the City and the Railroad Company was made.

Judge LAWRENCE: Camp also had a lease from the City that is involved in a suit that he had. He had no record title, but claimed an equitable title, as I understand it, in his property.

Mr. BAKER: He had an equitable title growing out of the lease from the City, as we understand it.

616 Judge LAWRENCE: No, I think he claims more than that. Said agreement is as follows:

This agreement made this 9th day of October A. D. 1849 by and between Frederick Harback and Hezekiah Camp both of Cleveland Witnesseth. That whereas the said Harback has purchased by contract of William B. Lloyd all his interest in the following described lands and tenements to wit situated in the City of Cleveland County of Cuyahoga and State of Ohio and bounded North by Lake Erie, East by Water Street, South by the north line of original lot number one hundred and ninety one (191) in said City and West by Cuyahoga River and all rights and interests in said property and the control of all suits heretofore commenced thereof, and all rights and interests growing out of the same or in any way connected therewith, or with said property, and whereas said Camp has an equitable interest in said property and is also to repay part of the amount advanced to said Lloyd by said Harback & whereas said Lloyd and Camp have entered into a contract with the Cleveland, Columbus and Cincinnati Rail Road Company for the use and occupation of said ground, one inducement to which was to unite the claim of the City of Cleveland with the title and claim of said Camp and Lloyd and thus to render the title thereto now unquestionable. And whereas it is proposed between the parties hereto to secure if possible certain modifications of said contract *is* more advantageous arrangements for the use and occupancy of said land. Now therefore in consideration of the premises and for the purposes of securing to each party hereto the full benefit contemplated by all the arrangements relative to said property it is agreed by and between them as follows. The said Camp agrees as the conveyance from said Lloyd to said Harback shall be executed and delivered to release quit claim and convey to said Harback all his right title and interest in said property and in said suits and all his right and interests growing out of the same or in any way connected therewith or with said property subject to the aforesaid contract with said Rail Road Company which said Harback is to fulfill except so far as same may be modified by the mutual consent of the parties hereto and of said Railroad Company. And the said Harback doth agree to and with the said Camp that wherever he shall be thereunto requested after the interest of said Camp and Lloyd shall be conveyed to him as aforesaid, he will advance and transfer to said Camp in the *sack* of the afore-

617 said Rail Road Company fully paid up, the sum of twenty four hundred dollars (\$2400.00) and will also on demand convey to the said Camp by proper assurance of title covenanting only against his own acts one equal undivided half of the aforesaid property with all the suits, judgments rights interest, immunities and privileges therewith connected and in any manner accruing to said Harback the whole of said property rights interests immunities and privileges thereafter until dispossessed of as hereinbefore provided for to be held by the parties hereto as tenants in common Share & Share alike and upon the conveyance of the one half to said Camp as aforesaid he hereby agrees to mortgage or otherwise transfer the same to said Harback by an appropriate instrument of transfer to secure to the said Harback, the sum of four

thousand two hundred dollars (\$4200.00) with semi annual interest from the date of said Harback's payment to said Lloyd, and also said sum of twenty four hundred dollars (\$2400.00) with semi annual interest from the date of its advance, with interest on both the said sums to be paid semi annually in cash and the principal to be paid at the expiration of five years from the date of the advance for the security of all which said Camp shall execute his promissory notes as well as give the security above provided for. And the said Harback further agrees that he will lease to the said Camp for the term of five years from the first day of February next at a rent of \$600 per annum his the said Harback's undivided half of the following described parcel of said land, to wit, all the piece or parcel of land bounded westerly by the Stone Pier so called southerly by a line drawn parallel with the south line of Bath Street and two hundred and eighty two (282) feet northwardly therefrom measuring at right angles and by that part of Bath Street extending northerly along the Pier 150 feet. Northwardly by a line drawn parallel with the south line of Bath Street and five hundred and thirty two feet (532) therefrom measuring at right angles and eastwardly by a line to be drawn parallel with the Rail Road tracks which may be laid from Bath Street or near the same towards the northerly end of the Stone Pier so as to leave a space of thirty feet in breadth between the westerly track and the line so to be drawn, as an open carriage way. Said parcel of land to be at least 300 feet deep on the south line and 150 feet on the north line thereof, measuring from the westerly face of the Pier, is to be left open and unobstructed as a passway along said pier, the lessees having the right to pass property across the same. Provided however if arrangements shall be made with the said Rail Road Company as is now proposed to increase said last Space to a

618 breadth of twenty five feet and receive therefor ten feet next south of the parcel above described commencing however One Hundred feet east of the Westerly face of said Pier, that said ten feet shall be included in said lease and said Camp — allow the space aforesaid to be increased as above proposed. And the said Camp hereby agrees to lease the aforesaid interest from said Harback on the terms aforesaid and pay the rent thereof at the rate aforesaid at the expiration of each and every quarter a lease in proper form to be executed on or before said first day of February next. And the parties hereto hereby agree each with the other, that they will severally use their best endeavors to perfect and secure the title and possession of all the aforesaid property and to enlarge the privileges on the same and secure the largest and best rights therefor from said Rail Road Company and all other persons bodies politic or corporate having any interest therein and to quiet all disputes relative thereto. No charge to be made for personal services or attention but all the other expenses of all future negotiations, settlements and arrangements suits and prosecutions relative to or growing out of the same to be paid by the parties hereto, equally share and share alike, but said Harback is to pay no part of the expenses of suits heretofore prosecuted. And it is further

agreed that neither party shall sell or transfer his interest to any third person in the aforesaid property, rights or interest or any part thereof, without the written consent of the other unless the party proposing to sell, shall first give the other the opportunity of purchasing on the terms offered and shall give him a reasonable time to elect whether he will become the purchaser on such terms or not.

Witness our hands this 9th day of October A. D. 1849.

(Signed)

FREDERICK HARBACK.
H. CAMP.

Memorandum of an Agreement made by and between Hezekiah Camp and Frederick Harback, both of the City of Cleveland, State of Ohio, whereby it is mutually agreed and stipulated as follows in relation to the Bath Street Property.

First. Said Camp is to give up his lease or right to a lease of the reservations on the stone Pier as made with the Rail Road Company and the City, which said Harback agreed to make to him.

Second. Said Camp agrees not to sell his interest in the Stockley Pier to other parties but to retain the same and put it into the Bath Street property in common at cost, whenever he can get the requisite power so to do.

619 Third. Said Harback is to forgive the debt said Camp owes him on account of the purchase of the Lloyd interest amounting to Forty two hundred dollars (\$4200.)

Fourth. Said Harback is to loan said Camp Thirty shares of stock in the C., C. & C. R. R. on the terms originally agreed for twenty four shares and in their stead.

Fifth. Said Camp is to be permitted to draw from his portion of the rents the first year all his share, and thereafter such an amount as will not interfere with the original understanding between the parties to improve and enlarge the rights and privileges of both in and to said Bath Street property. It being understood that said Camp has now some existing liabilities to pay off from the first of his share of said rents and also to live out of the same he hereby reserves the right to draw them for that purpose.

Sixth. All the property hereinafter is to be one common interest and all the original agreements not inconsistent with these articles to be as binding as ever.

In witness whereof the parties have hereunto set their hands this day.

Cleveland June 10th, 1850.

(Signed)

FREDERICK HARBACK.
H. CAMP.

S. C. BALDWIN, *Witness.*

Whereas, the Cleveland and Pittsburgh Railroad Company by order of their Board of Directors previously made on the tenth day of April eighteen hundred and fifty one, filed in the Clerk's office of the Superior Court of Cleveland an instrument of appropriation,

apropriating the following lands and premises, situated in the City of Cleveland, County of Cuyahoga and State of Ohio, known as part of Bath Street Tract so called bounded as follows, to wit, beginning upon the water edge of the East Pier of Cleveland Harbor at a point two hundred and eighty-two feet (282) northerly from the south line of Bath Street (measuring with said water edge of said Pier the bearing of which is N. 30° W.) thence north 66° east parallel with said south line of Bath street three hundred feet (300) to the periphery of a circle the radius of which is six hundred and fifty feet (650) convexing towards the Cuyahoga River thence northerly along the periphery of said circle to a point one hundred and fifty feet easterly of the water edge of said Pier thence westerly on a line parallel with said south line of Bath Street one hundred and fifty feet to the water edge of said pier and thence along the water edge of said Pier southerly two hundred and fifty feet to the place of beginning; for the purpose of building 620 their Rail Road, necessary side tracks and depots thereon, and for all other purposes appertaining to said road. And whereas said Company by order of their Board of Directors on the fifteenth day of April eighteen hundred and fifty one filed in the Clerk's office of the Superior Court of Cleveland an instrument of ap-propriation appropriating for the purpose aforesaid all that piece or parcel of land (now covered with water) situated in the County of Cuyahoga and State of Ohio and bounded as follows beginning at a point on the west line of Water Street produced or extended five hundred and fifty feet northerly from said south line of Bath Street (in the City of Cleveland) thence westerly on a line parallel with said south line of Bath Street to the center line of Spring Street produced or extended three thousand feet, thence easterly on a line parallel with said south line of Bath Street to the west line of Water Street produced or extended and thence southerly on said west line of Water Street to the place of beginning. And also whereas Thomas S. Harback the brother of Frederick Harback deceased Harriet L. Harback the widow of said deceased and Thomas Harback and Maria Louisa Harback minor children of said deceased, or some of them claim to be the legal and beneficial owners of one equal and undivided half of said premises. And also whereas the said Thomas S. and Harriet and said Thomas and Maria Louisa Harback or some of them claim to hold the legal title to one further equal undivided fourth part of said premises in Trust for the Cleveland and Pittsburgh Rail Road Company as assignees of one Hezekiah Camp. And also whereas by virtue of an agreement between one William B. Lloyd and said Hezekiah Camp of the one part and the Cleveland, Columbus and Cincinnati Rail Road Company of the second part made the eight day of August A. D. 1849 (a copy of which said contract is hereto attached marked "A") it was stipulated and agreed between said parties, that all that portion of Bath Street Tract so called falling within the lines of Spring Street extended northwardly when filled up is to be kept open as an Avenue or passage way between Bath Street and the premises secondly above described and to any Pier that hereafter

might be erected by either or both of said Parties extending along or near the course of Spring Street into Lake Erie; and also said second party further stipulated and agreed to and with said first party to drive within two years from said 8th day of August 1849 a substantial double row of piles from Stockley's Pier at a point two hundred feet north of the southerly line of the premises secondly above described westwardly to the center line of Spring Street produced, thence southwardly along said center line to

621 the south line of the premises secondly above described suitable for protecting the same when filled up from abrasure of the waves. Now therefore be it known that said Cleveland and Pittsburgh Rail Road Company of the first part by Zalmon Fitch, Henry W. Clark and Ellery G. Williams, Committee appointed and duly authorized by the Board of Directors of said Company for that purpose and Thomas Harback for himself and for said Thomas Harback as his Guardian in conjunction with the said Harriet L. Harback, Harriet L. Harback, for herself and for said Thomas Harback as his guardian in conjunction with said Thomas S. by Horace Foote her attorney for that purpose duly authorized and John J. Herrick for and as Guardian of said Maria Louisa Harback by his attorney Horace Foote for that purpose duly authorized, of the second part have this twenty second day of April A. D. -851 made and entered into the following agreement:

First. In consideration of the sum of twenty-one thousand and five hundred dollars to be paid by said company as hereinafter stated said Thomas S. for himself and for said Thomas Harback as his guardian as aforesaid, and said John J. Herrick for and as Guardian of said Maria Louisa Harback; the said Thomas S. & Harriet L. for themselves in their own individual capacities on the execution and interchange of this contract and the said Thomas S. and Harriet L. for and as Guardian of said Thomas Harback and said John J. Herrick for and as Guardian of the said Maria Louisa Harback on the approval of this contract by the Superior Court of Cleveland; hereby agree to execute and deliver to said Cleveland and Pittsburgh Rail Road Company a quit claim deed (with covenants of warranty against their own acts) of all legal and beneficial estate, title to or interest which said Thomas S. Harriet L. Thomas and Maria Louisa Harback and John J. Herrick either individually or as Guardian as aforesaid have in or to the following described premises situated in the said City of Cleveland, County of Cuyahoga and State of Ohio, known as part of Bath Street tracts so called and bounded eastwardly by the west line of Water Street produced southwardly by Bath Street reduced to one hundred feet in width, measuring from the southerly side thereof as surveyed by Ahaz Merchant and used in August, 1849, westwardly by the Stone Pier so called being the pier erected by the United States at the mouth of the Cuyahoga River on the easterly side thereof and northwardly by Lake Erie extending indefinitely into the same between the easterly and westerly boundaries above described produced northwardly into the Lake with all

622 the rights, privileges, and appurtenances thereunto in any wise appertaining, subject, however to Daniel P. Rhodes' right to the equal undivided fourth part of said premises first above

described and to a further right of the said Daniel P. to use and occupy exclusively in severalty for the term of twelve years from the first day of January 1851 free of rent the following described portion of said first described premises to wit: Beginning upon the water edge of the east Pier of Cleveland Harbor at a point three hundred and fifty two feet from the south line of Bath Street measuring with the water edge of said Pier, the bearing of which is N. 39° W.) thence north 66° east parallel with Bath Street south line two hundred and forty two 2-12 feet to the periphery of a circle the radius of which is six hundred and fifty feet thence along the periphery of said circle westerly to a point sixty two and 2-12 feet distant from the line described as running parallel with the south line of Bath Street is equivalent to sixty two and 2-12 feet parallel with said Pier thence south sixty six 66° west two hundred and two and 6-12 feet to the water edge of said Pier thence S. 30° east along said water edge of said Pier sixty two 2-12 feet to the place of beginning.

Second. Said Thomas S. for himself and said Harriet L. for herself and each for and as Guardian as aforesaid of said Thomas and said John J. Herrick for and as Guardian of said Maria Louisa for the consideration aforesaid further agree to and hereby do release and discharge said Company from any award or awards which may be hereafter made by any Committee appointed or to be appointed by any Court in consequence of any appropriation made or which may hereafter be made by said Company of all or any portion of the Bath street tract so called thirdly above described for the value of or damage done to the same or any portion thereof.

Thirdly. Said Thomas S. for himself said Harriet L. for herself and each for and as Guardian as aforesaid of Thomas Harback, and said John J. Herrick for and as Guardian of said Maria Louisa Harback for the consideration aforesaid, further agree to and hereby do assign and transfer to said Company any and all their interest in any contract or contracts now existing or heretofore made in reference to all or any portion of the Bath Street Tracts so called thirdly above described so far as the same may be necessary or can be made available to the said Company for the purpose of perfecting or protecting their title to said last mentioned property and of giving to the said Company the full benefit of any and all provisions and things in any and all such contracts contained relating to improvements to be made on said property or any other acts, matter
623 or thing to be done respecting the same or any part thereof.

And said Cleveland and Pittsburgh Rail Road Company in consideration of the performance of the stipulations above set forth to be performed by said second party hereby agree to pay to said second party Twenty-five Thousand dollars in the first issue of the income Bonds of said Company, payable five years from date and dated 1851 payable in the City of New York with seven per cent. interest semi-annually, with the right however reserved to said Company to substitute in lieu of said Bonds payable in New York if they should all have been disposed of before a telegraph dispatch sent yesterday reaches the President of said Company in New York,

the same amount, tenor, and class of the Bonds of said Company payable at their office in Ravenna, Ohio, the accrued interest to the date of this contract on said Bonds to be deducted. In testimony whereof the parties have hereunto set their hands and seals the day and year first above written.

THE CLEVELAND AND PITTSBURGH
RAIL ROAD COMPANY,

By	ZALMON FITCH,	[SEAL.]
	HENRY W. CLARK,	[SEAL.]
	ELLERY G. WILLIAMS,	[SEAL.]
	HARRIET L. HARBACK,	[SEAL.]
By	HORACE FOOTE, <i>Her Att'y.</i>	
	HARRIET L. HARBACK,	[SEAL.]
By	HORACE FOOTE, <i>Her Att'y.</i>	
	JOHN J. HERRICK, <i>Guardian,</i>	[SEAL.]
By	HORACE FOOTE, <i>His Att'y.</i>	
	THOMAS S. HARBACK,	[SEAL.]
	THOMAS S. HARBACK,	[SEAL.]
	<i>Guardian of Thomas Harback.</i>	

And afterwards to wit at the said May term of said Superior — A. D. 1851 came the Cleveland and Pittsburgh Rail Road Company and Thomas Harback and Maria Louisa Harback minor children and heirs at law of Frederick Harback deceased by their respective guardians the said Thomas Harback by Thomas S. Harback and Harriet L. Harback his guardian and the said Maria Louisa Harback by John J. Herrick her guardian and exhibited to the Court for its approval a certain contract between said Rail Road Company of the one part and the said guardian in behalf of their said wards and the said Thomas S. Harback and Harriet Harback in their own right of the other part entered into on the twenty second day of April 1851 a copy of which contract is filed with the Clerk of said Court and ordered to be recorded as a part of this proceeding and it appearing to said Court that the said Rail Road Company did on the 10th day of April, 1851, file in the office of the Clerk of this Court an instrument of appropriation appropriating said premises to the use of said Rail Road Company as required by law and the Court having examined the aforesaid contract between the said Rail Road Company and the said Guardian on behalf of their said wards and being satisfied that the same is for the interest of said wards do approve the said agreement and do authorize and empower said Guardian to convey all their interests of their said wards in said premises to the said Rail Road Company according to the terms of the aforesaid agreement.

THE STATE OF OHIO,
Cuyahoga County, ss:

THE CLEVELAND AND PITTSBURG RAILROAD COMPANY

VS.

THOMAS S. HARBACK, HEZEKIAH CAMP, HARRIET L. HARBACK,
Daniel P. Rhodes, Thomas S. Harback & Harriet L. Harback,
Guardian in Conjunction of Thomas Harback; John G. Herrick,
Guardian of Maria Louisa Harback.

Be it remembered that heretofore to wit, on the 10th day of April A. D. 1851 The Cleveland and Pittsburgh Rail Road Company in pursuance of the statute in such cases made and provided filed in the office of the Clerk of the Superior Court of Cleveland in and for the County of Cuyahoga and State of Ohio an Instrument of Appropriation made in the words and figures following to wit:

To all people to whom these presents shall come, Greeting:

Whereas the Cleveland and Pittsburgh Railroad Company, by order of their Board of Directors, for the purpose of constructing there on their Rail Road necessary side tracks and depots, have entered upon the following described land situated in the City of Cleveland County of Cuyahoga and State of Ohio, being a part of Bath Street so called, and bounded as follows, to-wit: beginning at a point on the water's edge of the east pier of Cleveland Harbor two hundred and eighty-two feet northerly of the South line of Bath Street (measuring with said water edge of said pier the bearing which is N. 30° W.) thence at 66° East parallel with the south line of Bath Street three hundred feet to the periphery of a circle the radius of which is six hundred and fifty feet covering towards the Cuyahoga River thence along the periphery of said circle to a point one hundred and fifty N. 66° E. of the water edge of said pier, thence southwesterly on a line parallel with said south line of said Bath Street one hundred and fifty feet to the water edge of
625 said pier thence southerly along the water edge of said pier and thence southerly along the water edge of said pier two hundred and fifty feet to the place of beginning and which said premises are now in the possession under a claim of the legal or equitable title thereto, of Thomas S. Harback who resides without the County of Cuyahoga and State of Ohio, in his own right, and as Guardian of Thomas Harback, Hezekiah Camp of Cleveland in said County of Cuyahoga in his own right Harriet L. Harback (who resides without said County of Cuyahoga) in her own right, and as guardian in conjunction with said Thomas S. of Thomas Harback John G. Herrick (who resides without said County of Cuyahoga) as Guardian of Maria Louisa Harback, and Daniel P. Rhodes of Cleveland, in said County of Cuyahoga, in his own right; said Daniel P. claiming the legal or equitable title to the equal undivided fourth part of said premises, and also an exclusive right to occupy in severalty for the term of twelve years from the first day of January 1851 free of rent the following described portion thereof to-

wit: beginning on the water edge of the East Pier of Cleveland Harbor at a point three hundred and fifty-two feet from the south line of Bath Street (measuring with said water edge of said Pier, the bearing of which is N. 30° W.) thence north 66° East parallel with Bath Street south line two hundred and forty-two 10-12 feet to the periphery of a circle the radius of which is six hundred and fifty feet thence along the periphery of said circle westerly to a point sixty-two and 2-12 feet distant from the line described as running parallel with the south line of Bath Street which is equivalent to sixty-two 2-12 feet parallel with said pier thence S. 66° W. two hundred two and 6-12 feet to the water edge of said Pier, thence S. 30° E. along said water edge of said Pier sixty-two and 6-12 feet to the place of beginning; said Hezekiah claiming to be the legal and beneficial owner of one equal undivided fourth part of said premises, said Thomas S. Harriet L. Thomas and Maria Louisa Harback claiming to be the legal or beneficial owners of one equal undivided half of said premises; the said Hezekiah in his own right, Harriet L. in her own right and as Guardian of said Thomas, Thomas S. in his own right, and as guardian of said Thomas, and John G. Herrick as guardian of said Maria Louisa Harback also claiming a right to the exclusive occupancy in severalty for a term of twelve years from the first day of January 1851 free of rent for all of said premises except the portion so held by said Daniel P. in severalty as aforesaid, but who in fact are the legal or beneficial owners of said premises is unknown to said Company or any of their Directors.

Now therefore Know Ye That the Cleveland and Pittsburgh
626 Rail Road Company by order of their Board of Directors have appropriated and do hereby appropriate the above described premises for the purpose of constructing their said Rail Road necessary side tracks and depots upon and across the same, and with the intention of using the land appropriated as aforesaid for all purposes appertaining to said Road.

In Witness Whereof said Rail Road Company by order of their Board of Directors have hereunto set their seal the tenth day of April A. D. eighteen hundred and fifty-one.

CYRUS PRENTISS, *President.*

[SEAL.] SAMUEL FOLJAMBE, *Secretary.*

And afterwards, to-wit, on the eighteenth day of June in the year of our Lord one thousand eight hundred and fifty-one came the said Pittsburgh Rail Road Company and filed their petition in the said Superior Court of Cleveland which petition was in the words and figures following, to-wit:

To the Honorable Sherlock J. Andrews, Judge of the Superior Court of Cleveland in and for the County of Cuyahoga and State of Ohio:

The petition of the Cleveland and Pittsburgh Rail Road Company humbly sheweth that said Company by order of their Board of

Directors on the tenth day of April A. D. 1851 executed an instrument of appropriation of which the following is a copy, to-wit:

To all people to whom these presents shall come, Greeting:

Whereas The Cleveland and Pittsburgh Rail Road Company by order of their Board of Directors for the purpose of constructing thereon their Rail Road necessary side tracks and depots have entered upon the following described land situated in the City of Cleveland, County of Cuyahoga and State of Ohio, being a part of Bath Street tract so called, and bounded as follows to-wit: beginning at a point on the water's edge of the east Pier of Cleveland Harbor two hundred and eighty-two feet northerly of the south line of Bath Street (measuring with said water edge of said Pier the bearing of which is north 30° W.) thence N. 66° East parallel with the south line of Bath Street, three hundred feet to the periphery of a circle the radius of which is six hundred and fifty feet convexing towards the Cuyahoga River thence along the periphery of said circle to a point one hundred and fifty feet N. 66° E. of the water edge of said Pier, thence southwardly on a line parallel with said south line of said Bath Street one hundred and fifty feet to the water edge of said

Pier, and thence southerly along the water edge of said Pier
 627 two hundred and forty feet to the place of beginning; and which said premises are now in the possession under a claim of the legal or equitable title thereto of Thomas S. Harback (who resides without the County of Cuyahoga and State of Ohio) in his own right and as Guardian of Thomas Harback, Hezekiah Camp of Cleveland in said County of Cuyahoga, in his own right, Harriet L. Harback who resides without the County of Cuyahoga in her own right and as guardian in conjunction with said Thomas S. of Thomas Harback, John G. Herrick who resides without the said County of Cuyahoga Guardian of Maria Louisa Harback and Daniel P. Rhodes of Cleveland in said County of Cuyahoga in his own right. Said Daniel P. claiming the legal or equitable title to the equal undivided fourth part of said premises, and also an exclusive right to occupy in severalty for the term of twelve years from the first day of January 1851 free of rent the following described portion thereof, to-wit: beginning upon the water's edge of the east Pier of Cleveland Harbor at a point three hundred and fifty-two feet from the south line of Bath Street (measuring with said water's edge of said Pier the bearing of which is N. 30° W. thence north 66° East parallel with Bath Street south line two hundred and forty-two 11-12 feet to the periphery of a circle the radius of which is six hundred and fifty feet thence along the periphery of said circle westerly to a point sixty-two and 2-12 feet distant from the line described as running parallel with the south line of Bath Street which is equivalent to sixty-two and 6-12 feet parallel with said Pier, thence S. 66° W. two hundred and two and 6-12 feet to the water edge of said Pier thence S. 30° E. along said water edge of said Pier sixty-two and 6-12 feet to the place of beginning. Said Hezekiah Camp claiming to be the legal or beneficial owner of one equal undivided fourth part of said premises. Said Thomas S. Harriet L.

Thomas and Maria Louisa Harback claiming to be the legal or beneficial owner of one equal undivided half of said premises the said Hezekiah in his own right Harriet L. in her own right and as Guardian of the said Thomas, Thomas L. in his own right and as Guardian of said Thomas, John G. Herrick for said Maria Louisa Harback also claiming a right to the exclusive occupancy in severalty for a term of twelve years from the first day of January, 1851, free of rent of all of said premises except the portion so held by said Daniel P. in severalty as aforesaid but who in fact are the legal or beneficial owners of said premises is unknown to said Company or any of their Directors. Now, therefore, Know Ye That the Cleveland and Pittsburgh Rail Road Company by order of their Board of Directors have appropriated, and do hereby appropriate 628 the above described premises for the purpose of constructing their said Rail Road necessary side tracks and depots upon and across the same and with the intention of using the land appropriated as aforesaid for all purposes appertaining to said Road.

In Witness Whereof said Rail Road Company by order of their Board of Directors have hereunto set their seal the tenth day of April, A. D. eighteen hundred and fifty-one.

CYRUS PRENTISS, *President.*

[L. S.] SAMUEL FOLJAMBE, *Secretary.*

And your petitioners further state that they filed said instrument of appropriation in the office of said Superior Court of Cleveland in the County first aforesaid on said tenth day of April, A. D. 1851. Your Petitioners caused a notice a copy of which is hereto attached to be published in the True Democrat a paper in general circulation in said County of Cuyahoga, reciting the substance of such instrument of appropriation for more than three weeks next ensuing which notice was in the words and figures following, to-wit: Notice is hereby given to John G. Herrick, Thomas S. Harback, Harriet L. Harback, Thomas Harback and Maria Louisa Harback and to all other persons bodies politic or corporate having or claiming to have, any right title to or interest in the following described premises situated in the City of Cleveland, County of Cuyahoga and State of Ohio, being a part of Bath Street tract, so called, and bounded as follows: Beginning at a point on the water's edge of the east Pier of Cleveland Harbor two hundred and eighty-two feet northerly of the south line of Bath Street, measuring with said water's edge of said pier, the bearing of which is N. 30° W. thence N. 66° E. parallel with said north line of Bath Street three hundred feet to the periphery of a circle to a point one hundred and fifty feet N. 66° E. of the water's edge of said pier, thence southwesterly on a line parallel with said south line of Bath Street one hundred and fifty feet to the water edge of said pier and thence southerly along the water's edge of said pier two hundred and fifty feet to the place of beginning, that the Cleveland and Pittsburgh Rail Road Company by order of their Board of Directors on the third day of April 1851 appropriated the above described premises for the purpose of constructing thereon their Rail Road necessary side tracks and depots,

and that on the tenth day of April 1851 an instrument of the appropriation of said premises describing the same as above set forth for the purposes aforesaid was filed in the Clerk's office of the Superior

629 Court of Cleveland. Said instrument of appropriation also sets forth that said premises are in the possession, under a claim of the legal equitable right thereto of said Thomas S.

Harback (who resides without the County of Cuyahoga) in his own right, and as one of the guardians of said Thomas Harback, Hezekiah Camp of Cleveland in said County, in his own right, Harriet L. Harback (who resides without said County) in her own right, and as one of the guardians of said Thomas Harback, John G. Herrick (who resides without said county) as guardian of said Maria Louisa Harback, and Daniel P. Rhodes of said City of Cleveland, in his own right, said Daniel P. claiming the legal or equitable title to the equal undivided fourth part of said premises, and also an exclusive right to occupy in severalty for the term of twelve years from the first day of January 1851 free of rent, the following described portion of said premises to-wit: beginning upon the water's edge of said east pier of Cleveland Harbor at a point three hundred and fifty-two feet from the south line of Bath Street measuring with the water's edge of said pier the bearing of which is N. 30° W. thence north 66° east parallel with said north line of Bath Street, two hundred and forty-two 11-12 feet to the periphery of said circle thence along the periphery of said circle westerly to a point sixty-two and 2-12 feet distant from the line last described as running parallel with said south line of Bath Street thence S. 66° W. two hundred and two and 6-12 feet to the water's edge of said pier, thence S. 30° E. along said water's edge of said pier sixty-two and 6-12 feet to the place of beginning, said Hezekiah Camp claiming to be the legal or beneficial owner of one equal undivided fourth part of said premises, said Thomas S. Harriet L. Thomas and Maria Louisa Harback, claiming to be the legal or beneficial owners of one equal undivided half of said premises; the said Hezekiah, in his own right, Harriet L. in her own right, and as Guardian of said Thomas, Thomas S. in his own right and as guardian of said Thomas, John G. Herrick as Guardian of said Maria Louisa, also claiming a right to the exclusive occupancy in severalty for a term of twelve years from the first day of January 1851 free of rent of all said premises except the portion so held by said Daniel P. in severalty as aforesaid. Said instrument of appropriation further sets forth that neither said Company or any of their Directors know in fact who are the legal or beneficial owners of said premises.

CYRUS PRENTISS, *President.*

SAMUEL FOLJAMBE, *Secretary.*

WILLIAM & CARY, *Attorneys.*

630 Your petitioners therefore pray that your Honor may appoint three disinterested freeholders of said County of Cuyahoga appraisers, and that you issue a warrant to them requiring them, after having been duly sworn to appraise the premises afore-

said according to the provisions of the charter of your Petitioners and the law of the land.

THE CLEVELAND & PITTSBURGH
RAIL ROAD COMPANY,
By WILLIAM & CARY, *Their Att'ys.*

June 16th, 1851.

And therefore said Cleveland and Pittsburgh Rail Road Company by its attorneys moved for the appointment of a committee to appraise the damage done to said Thomas S. Harback and others the owners of certain lands and materials appropriated by said company as set forth in said petition as presented as aforesaid and said Judge appointed George Hoadley, Orlando Cutter and Ahimaz Sherwin, Esqs., such committee and issued a warrant accordingly, which warrant was in the words and figures following to-wit:

THE STATE OF OHIO,

Cuyahoga County, ss:

To George Hoadley, Orlando Cutter and Ahimaz Sherwin, Esqs., three disinterested freeholders of said County:

Whereas The Cleveland and Pittsburgh Rail Road Company on the tenth day of April, 1851, filed in the office of the Clerk of the Superior Court of Cleveland in and for said County of Cuyahoga and State of Ohio, an Instrument of Appropriation of which the following is a copy to-wit:

To all People to whom these presents shall come, Greeting:

Whereas the Cleveland Pittsburgh Railroad Company, by order of their Board of Directors, for the purpose of constructing thereon their Railroad necessary side tracks and depots, have entered upon the following described land situated in the City of Cleveland County of Cuyahoga and State of Ohio, being a part of Bath Street tracts so called, and bounded as follows, to-wit: beginning at a point on the water's edge of the east Pier of Cleveland Harbor two hundred and eighty-two feet northerly of the south line of Bath Street (measuring with said water's edge of said Pier the bearing of which is N. 30° W.) thence N. 66° east parallel with the south line of Bath Street three hundred feet to the periphery of a circle the radius of which is six hundred and fifty feet commencing towards the Cuyahoga River, thence along the periphery of said circle to a point one hundred and fifty feet N. 66 degrees E. of the water edge of said Pier, thence southwesterly on a line parallel with said south line of said Bath Street one hundred and fifty feet to the water edge of said Pier and thence southerly along the
631 water edge of said Pier two hundred and fifty feet to the place of beginning and which said premises are now in the possession under a claim of the legal or equitable title thereto, of Thomas S. Harback (who resides without the County of Cuyahoga and the State of Ohio, in his own right, and as Guardian of Thomas

Harback, Hezekiah Camp of Cleveland in said County of Cuyahoga in his own right, Harriet L. Harback (who resides without said County of Cuyahoga) in her own right, and as guardian in conjunction with said Thomas S. of Thomas Harback, John G. Herrick (who resides without the County of Cuyahoga) as Guardian of Maria Louisa Harback, and Daniel P. Rhodes of Cleveland, in said County of Cuyahoga, in his own right; said Daniel P. claiming the legal or equitable title to the equal undivided fourth part of said premises, and also an exclusive right to occupy in severalty for the term of twelve years from the first day of January, 1851, free of rent the following described portion thereof to-wit: beginning on the water edge of the east pier of Cleveland Harbor at a point three hundred and fifty-two feet from the south line of Bath Street (measuring with said water edge of said Pier, the bearing of which is N. 30 degrees W.) thence north 66 degrees east parallel with Bath Street south line two hundred and forty-two 11-12 feet to the periphery of a circle the radius of which is six hundred and fifty feet thence along the periphery of said circle westerly to a point sixty-two and 2-12 feet distant from the line described as running parallel with the south line of Bath Street which is equivalent to sixty-two 2-12 feet parallel with said pier, thence S. 66 degrees W. two hundred two and 6-12 feet to the water edge of said pier, thence S. 30 degrees E. along said water edge of said pier sixty-two and 6-12 feet to the place of beginning. Said Hezekiah claiming to be the legal and beneficial owner of one equal undivided fourth part of said premises, said Thomas S. Harriet L. Thomas and Maria Louisa Harback claiming to be the legal or beneficial owner of one equal undivided half of said premises; the said Hezekiah in his own right, Harriet L. in her own right and as Guardian of said Thomas, Thomas S. in his own right, and as Guardian of said Thomas, and John G. Herrick as Guardian of said Maria Louisa Harback also claiming a right to the exclusive occupancy in severalty for a term of twelve years from the first day of January 1851 free of rent for all of said premises except the portion so held by said Daniel P. in severalty as aforesaid, but who in fact are the legal or beneficial owners of said premises is unknown to said Company or any of their Directors. Now therefore Know Ye That the Cleveland and
632 Pittsburgh Rail Road Company by order of their Board of Directors have appropriated and do hereby appropriate the above described premises for the purpose of constructing their said Rail Road necessary side tracks and depots upon and across the same, and with the intention of using the land appropriated as aforesaid for all purposes appertaining to said Road.

In Witness Whereof said Rail Road Company by order of their Board of Directors have hereunto set their seal the tenth day of April A. D. eighteen hundred and fifty-one.

CYRUS PRENTISS, *President.*

[SEAL.] SAMUEL FOLJAMBE, *Secretary.*

And it appearing to the undersigned Sherlock J. Andrews, Judge of said Superior Court of Cleveland that said Cleveland and Pittsburgh Railroad Company have delivered to said Hezekiah Camp and Daniel P. Rhodes each a copy of said instrument of appropriation and have caused to be published in the True Democrat a paper in general circulation in said County an advertisement reciting the substance of such instrument of appropriation for three weeks subsequent to such appropriation. Therefore upon the application of said Railroad Company the said George Hoadley, Orlando Cutter, Ahimaz Sherwin are appointed by the undersigned appraisers to appraise the damages which the owners of the land aforesaid may sustain by reason of such appropriation and after having been duly sworn you shall consider the benefit as well as the injury which the owners will sustain by reason of such appropriation and you shall forthwith return you assessment of damages to the Clerk of said court setting forth the value of the property taken as aforesaid, the amount of benefit conferred upon the owners and the difference between the value of or damage done to the property taken, which you assess to such owners separately; all of which you shall in no wise omit.

Witness my hand and seal this 17th day of June eighteen hundred and fifty-one.

S. J. ANDREWS, [SEAL.]
Judge of the Superior Court of Cleveland.

THE STATE OF OHIO,
Cuyahoga County, ss:

CLEVELAND TOWNSHIP, June —, 1851.

Personally appeared George Hoadley, Orlando Cutter, Ahimaz Sherwin and were severally sworn to appraise the value of, or damage done to the property described in the foregoing order and to take into consideration the benefits conferred, as well as the damages sustained by the owners thereof, and to make an
 633 assessment and return thereof in the manner required by the foregoing order.

Before me.

JAS. D. CLEVELAND,
Justice of the Peace of Cleveland Township.

And afterwards, to-wit: On the eighteenth day of June, eighteen hundred and fifty-one said George Hoadley, Orlando Cutter and Ahimaz Sherwin returned into the office of the Clerk of said Superior Court of Cleveland and filed therein their appraisal which appraisal was in the words and figures following to-wit:

We, the undersigned appraisers named in the foregoing order, having been duly sworn and having viewed the property described in the foregoing order, do appraise the same at the value of fifty thousand and ten dollars. We appraise the damages which the owners thereof will sustain by reason of the appropriation thereof to the purposes

of said Railroad at fifty thousand and ten dollars. We appraise the benefits conferred upon the owners by reason of said Railroad at nothing. We assess the difference between the said value of said damages and said benefits at fifty thousand and ten dollars. And we assess such difference between the said value *or* said damages and said benefits being fifty thousand and ten dollars to the owners of said property separately as follows to-wit: To Thomas S. Harback, Harriet L. Harback, Thomas Harback and Maria Louisa Harback twenty-two thousand dollars. To Hezekiah Camp eleven thousand dollars. To Daniel P. Rhodes seventeen thousand dollars and to unknown owners ten dollars. Which is respectfully returned by us.

Given under our hands this eighteenth day of June A. D. eighteen hundred and fifty-one.

O. CUTTER,
A. SHERWIN,
GEO. HOADLEY,
Appraisers.

THE STATE OF OHIO,
Cuyahoga County, ss:

I, Harry L. Vail, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing copy is taken and copied from the records of Railroad Appraisals page 244, of the Proceedings of the Court of Common Pleas, within and for said Cuyahoga County, and that said foregoing copy has been compared by me, with the original record of Railroad Appraisals page 244 and that the same is a correct transcript thereof.

In Testimony Whereof, I do hereunto subscribe my name officially and affix the seal of said court at the Court House
634 in the City of Cleveland, in said County, this 31 day of December, A. D. 1898.

[SEAL.]

HARRY L. VAIL, *Clerk.*

(Rev. Stamp 10c.)

I, Walter C. Ong, Presiding Judge of the Court of Common Pleas, within and for the Fourth Judicial District of the State of Ohio, in which District is said County of Cuyahoga, do hereby certify that, Harry L. Vail was at the date of the above certificate, and now is, Clerk of said Court of Common Pleas, within and for said Cuyahoga County, and State of Ohio, and that said Clerk is the officer in whose custody said original record of Railroad Appraisals page 244 is required to be kept by the laws of the State of Ohio, and authorized by the laws of the State of Ohio, to certify as aforesaid, and that said attestation to said copy of said record is in due form of law.

Signed by Me, and dated at Cleveland, Cuyahoga County, Ohio, this 31 day of December, A. D. 1898.

WALTER C. ONG,
Judge as Aforesaid.

(Rev. Stamp 10c.)

THE STATE OF OHIO,
Cuyahoga County, ss:

I, Harry L. Vail, Clerk of the Court of Common Pleas, a Court of Record of Cuyahoga County aforesaid, do hereby certify that Walter C. Ong by whom the annexed certificate was made was, at the date thereof, a presiding judge of the Common Pleas Court in and for said County, duly authorized by the laws of Ohio to make the same, and that I am well acquainted with his hand-writing, and believe his signature thereto is genuine.

In Testimony Whereof, I do hereto subscribe my name and affix the seal of said court, at Cleveland, this 31 day of December, A. D. 1898.

[SEAL.]

HARRY L. VAIL, *Clerk.*

(Rev. Stamp 10c.)
 No. 11.

(Endorsed:) Cuyahoga Common Pleas. The C. & P. Ry. Co. vs. Harback et al. Copy of Record.

And further to maintain the issues on their part, defendants the Cleveland and Pittsburgh Railroad Company and the Pennsylvania Company, offered in evidence Quit Claim Deed from Daniel P. Rhodes and wife to The Cleveland & Pittsburgh Railroad
 635 Company, recorded in Cuyahoga County Records, Vol. 64, pages 524-5, a true copy of which is as follows, to-wit:

Quit Claim Deed.

To All People to Whom These Presents Shall Come, Greeting:

Know Ye, That we Daniel P. Rhodes & Sophia L. Rhodes, wife of said Daniel P. of the County of Cuyahoga & State of Ohio for divers good causes and considerations thereunto moving, especially for Twenty Thousand Dollars received to our full satisfaction, of The Cleveland and Pittsburgh Railroad Company have given, granted, remised, released and forever quit claimed, and do by these presents absolutely give, grant, remise, release, and forever Quit Claim, unto the said Cleveland & Pittsburgh Railroad Company to its successors and assigns forever, all such right and title as we the said Daniel P. Rhodes and Sophia L. Rhodes have or ought to have, in or to the following described Land, situate in the City of Cleveland in the Connecticut Western Reserve, in the State of Ohio, and Cuyahoga County, and bounded as follows to-wit: beginning at a point on the water's edge of the east pier of Cleveland Harbor two hundred and eighty-two feet northerly of the south line of Bath Street (measuring with said water's edge of said pier to bearing of which is N. 30° W.) then N. 66° East parallel with the south line of Bath Street three-hundred feet to the periphery of a circle the radius of which is five hundred and fifty feet convexing towards the Cuyahoga River, thence along the periphery of said circle to a point one

hundred and fifty feet N. 66° E. of the water edge of said pier, thence southwesterly on a line parallel with said south line of said Bath Street one hundred and fifty feet to the water edge of said pier, and thence southerly along the water edge of said pier two hundred and fifty feet to the place of beginning.

To Have and to Hold the premises aforesaid, unto the said Cleveland and Pittsburgh Railroad Company, its successors and assigns, to the only use and behoof of the said Cleveland & Pittsburgh Railroad Company, its successors and assigns forever, so that neither we the said Daniel P. and Sophia L. nor our heirs, nor any other person or persons claiming title through or under us or either — us shall or will hereafter claim or demand any right or title to the premises, nor any part thereof; but they and every one of them, shall by these presents be excluded and forever barred. And I the said Sophia L., wife of said Daniel P. do hereby remise, release and forever quit claim unto the said Railroad Company and its assigns all my right and title of dower in the above described premises.

636 In Witness Whereof, We have hereunto set our hands and seals the 18th day of June in the year of our Lord one thousand eight hundred and fifty-one.

DANEIL P. RHODES. [SEAL.]
SOPHIA L. RHODES. [SEAL.]

Signed, Sealed and Delivered in presence of
HOMER STRONG.
ARAD KENT.

THE STATE OF OHIO,

Cuyahoga County, ss:

June 18, 1851.—Personally appeared Daniel P. Rhodes and Sophia L. Rhodes his wife who acknowledged that they did sign and seal the foregoing instrument, and that the same is their free act and deed.

I Further Certify, that I did examine the said Sophia L. Rhodes separate and apart from her said husband, and did then and there make known to her the contents of the foregoing instrument; and upon that examination she declared that she did voluntarily sign, seal and acknowledge the same, and that she was still satisfied therewith.

HOMER STRONG,
Justice of the Peace.

(Endorsed:) DB 388 Cuyahoga. Daniel P. Rhodes & wife to C. & P. R. Road Co. Quit Claim Deed. Received July 27th, 1853. Recorded August 18th, 1853 Cuyahoga Co. Records, Book 64 Pages 524-5 Lee Ford, Recorder. 10. Entered for transfer July 27, 1853. Chas. Winslow, Co. Aud.

And further to maintain the issues on their part defendants the Cleveland and Pittsburgh Railroad Company and the Pennsylvania Company offered in evidence Receipt and Release from Harriet L.

Harbach et al. to The Cleveland & Pittsburgh Railroad Company, and a true copy of same is as follows, to-wit:

"Received of the Cleveland and Pittsburgh Railroad Company Twenty-five Thousand Dollars in the bonds of said Company in full for the amount to be paid us by said Company as per their agreement with us bearing date the 22nd of April A. D. 1851, approved by the Superior Court of Cleveland at the May Term thereof A. D. 1851. And we hereby release and discharge said Company from the payment to us of any sum on account of any award or assessment in our favor made by the committee appointed to appraise the damages sustained by reason of the appropriation by said Company, specified in said agreement.

637 "Witness our hands and seals this 18th day of June A. D. 1851.

HARRIET L. HARBACH, [L. s.]

By H. FOOTE, *Her Att'y.*

HARRIET L. HARBACH, [L. s.]

As Guardian of Thomas Harbach,

By H. FOOTE, *Her Attorney.*

JOHN I. HERRICK, [L. s.]

As Guardian of Marie Louisa Harbach,

By H. FOOTE, *His Attorney.*

THOMAS S. HARBACH, [L. s.]

For Himself and as Guardian of Thomas Harbach.

And further to maintain the issues on their part, the defendants The Cleveland & Pittsburgh Railroad Company and the Pennsylvania Company offered in evidence certified copy of Deed from Harriet L. & Thomas S. Harbach and others to The Cleveland & Pittsburgh Railroad Company recorded in Vol. 64, page 525 of Cuyahoga County Records, a true copy of which is as follows, to-wit:

Harriet L. & Thomas S. Harbach & Others
to
The Cleveland & Pittsburgh R. R. Comp'y.

Know all men by these presents that we Harriet L. Harbach, and Thomas Harbach for ourselves respectively and also for and as Guardian of Thomas Harbach a minor son and heir at law of Frederick Harbach deceased and John I. Herrick for and as Guardian of Maria Louisa Harbach a minor daughter and heir at law of the said Frederick the said Harriet L. and John I. acting herein by their attorney Horace Foote for divers good causes and considerations thereunto moving especially for the sum of twenty-one thousand and five hundred dollars received to our full satisfaction of the Cleveland and Pittsburgh Railroad Company and in pursuance of our contract with said company bearing date the 22nd day of April, A. D. 1851, and which was approved by the Superior Court of Cleve-

land at the May term thereof A. D. 1851, have given, granted, remised and released and forever quit claimed and do by these presents absolutely give, grant, remise, release and forever quit claim unto the said Cleveland and Pittsburgh Railroad Company and to their successors and assigns forever all such legal and beneficial estate title and interest as the said Harriet L., Thomas S. and Maria Louisa Harbach and John I. Herrick either individually or as guardians as aforesaid have in or to the following described premises: Situated in

638 the City of Cleveland in the County of Cuyahoga and State of Ohio. Known as part of the Bath Street Tract (so called) and bounded eastwardly by the west line of Water Street produced southwardly by Bath Street reduced to one hundred feet in width measuring from the southerly side thereof as surveyed by Ahaz Merchant and used in August A. D. 1849 Westwardly by the Stone Pier (so called) being the pier erected by the United States at the mouth of the Cuyahoga River on the eastwardly side thereof and northwardly by Lake Erie extending indefinitely into the same between the easterly and westerly boundaries above described produced northwardly into the Lake with all the rights, privileges and appurtenances thereunto in any wise appertaining, subject however to Daniel P. Rhodes' right to the equal undivided fourth part of said premises to the further right of the said Daniel P. to use and occupy exclusively in severalty for the term of twelve years from the first day of January A. D. 1851 free of rent the following described portion of said premises "to-wit" Beginning upon the water edge of the east pier of Cleveland Harbor at a point three hundred and fifty-two feet from the south line of Bath Street measuring with the water edge of said Pier the bearing of which is N. 30° W.) Thence North 66° east parallel with Bath Street south line two hundred and forty-two 11-12 feet to the periphery of a circle the radius of which is six hundred and fifty feet. Thence along the periphery of said circle westerly to a point sixty-two 2-12 feet distant from the line described as running parallel with the South line of Bath Street which is equivalent to sixty-two 2-12 feet parallel with said pier. Thence south 66° west two hundred and two 6-12 feet to the water edge of said pier. Thence S. 60° east along said water edge of said pier sixty-two 6-12 feet to the place of beginning. To have and to hold the above described estate, title and interest unto the said Cleveland and Pittsburgh Railroad Company their successors and assigns to the only use and behoof of the said Cleveland and Pittsburgh Railroad Company their successors and assigns forever but subject as aforesaid and the said Harriet L. Harbach and Thomas S. Harbach for themselves respectively & their respective heirs and assigns and for and as guardian of the said Thomas Harbach and the said John I. Herrick for and as guardian of the said Maria Louisa Harbach hereby bind themselves respectively to warrant and defend the aforesaid estate, title and interest subject as aforesaid to the said Cleveland and Pittsburgh Railroad Company and their assigns against any and all acts and things done by them respectively, individually or as such guardians as aforesaid but against no other act or

639 thing whatsoever. In witness whereof we have hereunto set our hands and seals the 18th day of June, A. D. 1851.

HARRIET L. HARBACH, [L. s.]

By H. FOOTE, *Her Attorney.*

HARRIET L. HARBACH, [L. s.]

As Guardian of Thomas Harbach,

By H. FOOTE, *His Attorney.*

JOHN I. HERRICK, [L. s.]

As Guardian of Maria Louisa Harbach.

By H. FOOTE, *His Attorney.*

THOMAS S. HARBACH. [L. s.]

THOMAS S. HARBACH, *Guar.* [L. s.]

Signed, sealed and delivered in presence of

JAMES WADE, JR.

H. V. WILLSON.

THE STATE OF OHIO,
Cuyahoga County, ss:

CLEVELAND, June 18th, 1851.

Before me, James Wade, Jr. a Notary in and for said county personally appeared the above named Thomas S. Harbach and acknowledged the foregoing instrument to be his free act and deed and also to be his free act and deed as the guardian of Thomas Harbach. Also appeared the above named Harriet L. Harbach by her attorney in fact Horace Foote and acknowledged the signing and sealing of the foregoing deed to be her free act and deed and the free act and deed of the said Horace Foote as said Attorney. Also appeared the above named Harriet L. Harbach as guardian of Thomas Harbach above named by her attorney in fact above named Horace Foote and acknowledged the signing and sealing of the foregoing instrument to be her free act and deed as guardian of Thomas Harbach and the free act and deed of the said Horace Foote as said Attorney. Also appeared the above named John I. Herrick Guardian of Maria Louisa Harbach, by his attorney in fact above named Horace Foote and acknowledged the signing and sealing of the foregoing instrument to be his free act and deed as guardian of Maria Louisa Harbach and the free act and deed of the said Horace Foote as said attorney. In witness whereof I have hereunto signed my name and hereto affixed my seal of office at Cleveland, Cuyahoga County, Ohio, this eighteenth day of June A. D. 1851.

JAMES WADE, JR., [L. s.]
Notary Public.

Received July 27th, 1853.

Recorded August 18th, 1853.

LEE FORD, *Recorder.*

640 THE STATE OF OHIO,
Cuyahoga County, ss:

I, Fred Saal, County Recorder of the County of Cuyahoga aforesaid, in whose custody the land records of said county are required

by the laws of the State of Ohio, to be kept, do hereby certify that the foregoing copy is taken and copied from the records of said county, as appears on page 525 in Vol. 64 of Deeds, and that said foregoing copy has been compared by me with said original record, and that the same is a correct transcript thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed my seal of office, at the Court House in the City of Cleveland, this 7th day of Jan. 1898.

[SEAL.]

FRED SAAL,

County Recorder,

By J. C. SIEGRIST,

Deputy Recorder.

I, Walter C. Ong, Presiding Judge of the Court of Common Pleas, within and for the Fourth Judicial District of the State of Ohio, in which District is said Court of Cuyahoga, do hereby certify that Fred Saal, was at the date of the above certificate County Recorder, within and for said Cuyahoga County, and State of Ohio, and that said County Recorder is the officer in whose custody said Land Records are required to be kept by the laws of the State of Ohio, and authorized by the laws of the State of Ohio, to certify as aforesaid, and that said attestation to said copy of said record is in due form of law.

Signed by Me, and dated at Cleveland, Cuyahoga County, Ohio, this 4th day of Jan'y, A. D. 1899.

WALTER C. ONG,

Judge, as Aforesaid.

(Endorsed:) Certified copy of Record of Deed from Harriet L. & Thomas S. Harbach & others to C. & P. R. R. Co. Original received for record July 27th, 1853, at — o'clock — M. Recorded August 18th, 1853, in Volume 64, Page 525, Cuyahoga County Records. Lee Ford, Recorder.

And further to maintain the issues on their part the defendants the Cleveland and Pittsburgh Railroad Company and the Pennsylvania Company read in evidence Receipt and Release from D. P. Rhodes to The Cleveland & Pittsburgh Railroad Company as follows, to-wit:

"For value received I do hereby fully release and discharge the Cleveland and Pittsburgh Railroad Company of and from all my right, title and interest in the appraisal and award made in my favor this day by O. Cutler, George Hoadley and Ahiamos
641 Sherwin, a Committee appointed by Sherlock J. Andrews, Judge of the Superior Court of Cleveland, to assess the damage, which the owners and all parties interested therein sustained by reason of an ap-ropriation made by said Company and filed in the office of the Clerk of the said Superior Court, April 10th, 1851.

DAN'L P. RHODES. [SEAL.]

Whereupon counsel for the defendant The Cleveland and Pittsburgh Railroad Company and the Pennsylvania Company offered in evidence certified copy of Deed from Hezekiah Camp and wife to The Cleveland and Pittsburgh Railroad Company, recorded in Vol. 64, page 520. A true copy of same is as follows, to-wit:

Hezekiah Camp & Wife
to
The Cleveland and Pittsburgh R. R. Company.

Know all men by these presents, that we Hezekiah Camp and Abigail Camp wife of said Hezekiah, for divers good causes and considerations thereunto moving especially for one dollar, received to our full satisfaction of the Cleveland & Pittsburgh Railroad Company, have given, granted, remised, released and forever quit-claimed and do by these presents absolutely give, grant, remise, release and forever quit-claim unto the said Railroad Company to its successors and assigns forever all such right and title as we the said Hezekiah and — Camp have or ought to have in or to the following described land, situate in the City of Cleveland, in the Connecticut Western Reserve in the State of Ohio and Cuyahoga County and described as follows, all that piece or parcel of land covered by water, bounded as follows, southerly from a point on the west line of Water Street produced five hundred and fifty feet from the south line of Bath Street to the center line of Spring Street produced and at right angles with the lines of said streets northwestwardly by Lake Erie, extending into the same indefinitely between the westerly line of Water Street produced and the center line of Spring Street produced by the westerly line of Water Street and westerly by the center line of Spring Street produced. To have and to hold the premises aforesaid unto the said Railroad Company, its successors and assigns, to the only use and behoof of the said Railroad Company its successors and assigns forever so that neither I the said Hezekiah Camp, nor my heirs, nor any other person or persons claiming title through or under me shall or will hereafter claim or demand any right or title to the premises on any part thereof, but they and every one of them shall by these presents be excluded and forever barred. And

642 I, the said Abigail Camp do hereby remise, release and forever quit-claim unto the said Railroad Company its successors and assigns, all my right and title of dower in the above described premises. In witness whereof we have hereunto set our hands and seals the twelfth day of April in the year of our Lord, one thousand eight hundred and fifty-one.

HEZEKIAH CAMP. [SEAL.]
ABIGAIL CAMP. [SEAL.]

Signed, sealed and delivered in presence of

JNO. C. GRANNIS.
ELIZA FOSDICK.

THE STATE OF OHIO,
Cuyahoga County, ss:

Personally appeared Hezekiah Camp & Abigail Camp his wife who acknowledged that they did sign and seal the foregoing instrument and that the same is their free act and deed. I further certify that I did examine the said Abigail Camp separate and apart from her said husband and did then and there make known to her the contents of the foregoing instrument and upon that examination she declared that she did voluntarily sign, seal and acknowledge the same, and that she was still satisfied therewith. Before me, Cleveland, April 12th, 1851.

JNO. C. GRANNIS, [L. s.]
Notary Public.

Received July 27th, 1853.
Recorded August 17th, 1853.

LEE FORD, Recorder.

THE STATE OF OHIO,
Cuyahoga County, ss:

I, Fred Saal, County Recorder of the County of Cuyahoga aforesaid, in whose custody the land records of said county are required by the laws of the State of Ohio, to be kept, do hereby certify that the foregoing copy is taken and copied from the records of said county, as appears on page 520 in Vol. 64 of Deeds, and that said foregoing copy has been compared by me with said original record, and that the said is a correct transcript thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed my seal of office at the Court House in the City of Cleveland, this 7th day of Jan. 1898.

[SEAL.]

FRED SAAL,
County Recorder.
By J. C. SIEGRIST,
Deputy Recorder.

I, Walter C. Ong, Presiding Judge of the Court of Common Pleas, within and for the Fourth Judicial District of the State of Ohio, in which District is said County of Cuyahoga, do hereby
643 certify that Fred Saal, was at the date of the above certificate, County Recorder, within and for said Cuyahoga County, and State of Ohio, and that said County Recorder is the officer in whose custody said Land Records are required to be kept by the laws of the State of Ohio, and authorized by the laws of the State of Ohio, to certify as aforesaid, and that said attestation to said copy of said record is in due form of law.

Signed by Me, and dated at Cleveland, Cuyahoga County, Ohio, this 4th day of Jany. A. D. 1899.

WALTER C. ONG,
Judge as Aforesaid.

(Endorsed:) Certified copy of record of Quit Claim Deed from Hezekiah Camp & Wife to Cleveland & Pittsburgh R. R. Co. Orig-

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inal received for record July 27th, 1853, at — o'clock — m. Recorded August 17th, 1853. In Volume 64, Page 520. Cuyahoga County Records. Lee Ford, Recorder.

And further to maintain the issues on their part the defendants The Cleveland and Pittsburgh Railroad Company and the Pennsylvania Company offered in evidence Agreement between The Cleveland & Pittsburgh Railroad Company and Lemuel Crawford, made August 1st 1851. (To which the plaintiff objected; the objection was overruled by the court; to which ruling of the court the plaintiff then and there excepted on the ground that the instrument produced is of date subsequent to the contract of September 13, 1849; that the City of Cleveland was not a party thereto, and it is not shown and counsel do not offer to show that the City had any knowledge of it or any relation to it.)

A true copy of said Agreement is as follows, to-wit:

This agreement made this first day of August 1851 *be-* between The Cleveland and Pittsburgh Rail Road Company of the first part and Lemuel Crawford of the second part, Witnesseth. That said first party in consideration of the performance of the stipulations hereinafter mentioned to be performed by the said Lemuel hereby agrees to permit said Lemuel to occupy for one year from the first day of December next (provided he shall then have performed the condition contained in a bond this day given by him to said first party) the following described premises situate in the City of Cleveland, County of Cuyahoga and State of Ohio, known as part of Bath Street Tract so called, and bounded as follows: Commencing at a point on the water edge of the East Government Pier at the mouth of the Cuyahoga River four hundred and fourteen feet (measuring with the water's edge of said Pier) north of the
644 south line of Front Street, thence northerly along the water's edge of said Pier to a point five hundred and thirty two feet (measuring with the water's edge of said Pier) north of said South line of Front street, thence N. 66° E. two hundred feet to the periphery of a circle the radius of which is six hundred and fifty feet commencing towards the Cuyahoga River, thence northerly along the periphery of said circle to a point intersected by a line running N. 66° E. from the place of beginning (being the point first above described) parallel with said south line of Front Street and twelve feet north of the present passenger and freight Depot of said first party, and thence westerly on said last described line to the place of beginning. Subject, however, to the following reservations.

First. The said Lemuel shall redeliver to said first party the possession of fifty feet front on the river off from the north side of the above described premises and extending back of the same width to the periphery of said circle, whenever they shall require the same for the use of the Cleveland, Painesville and Ashtabula Rail Road Company.

Second. That a strip twenty-five feet in width next to the Cuya-

hoga River and fronting on the same to be kept open as a public highway and for the passage of property across the same.

Third. That all vessels, steamboats or other water craft having freight, or property for or receiving the same from said first party shall have in all cases a prior right to the Pier or dock for the purpose of loading or unloading their respective cargoes, and said second party's canal boats, or other water craft lying in the river in front of the above described premises shall give way.

Said second party hereby agrees to pay to said first party in consideration of such possession to occupy as aforesaid subject to all reservations, the sum of five hundred dollars one fourth to be paid at the expiration of each and every three months from said first day of December next.

Said second party further agrees to deliver up to said first party the possession of said fifty feet mentioned in said first reservation whenever they may require the same for use of said Cleveland, Painesville and Ashtabula Rail Road Company, and also to deliver up to said first party on the first day of December, 1852, the possession of the balance of the above described premises, and in case of failure or neglect to deliver up the possession of said fifty feet when required as aforesaid, or the possession of the balance of the above described premises on said first day of Dec. 1852, the said second

party shall pay to said first party one thousand dollars per month for such time as he may continue to occupy said fifty feet after having been required to deliver up the possession of the same as aforesaid by said first party, and also one thousand dollars per month for such time as he may continue to occupy the balance of said premises after said first day of Dec. 1852, unless said Parties shall agree to extend the time of such occupancy beyond said last mentioned period.

In Witness Whereof said Parties have hereunto set their hands this day and year first above written.

THE CLEVELAND AND PITTSBURGH
RAIL ROAD COMPANY,
By CYRUS PRENTISS, *President*,
L. CRAWFORD.

(Endorsed:) The Cleveland & P. R. R. Co. with L. Crawford.

And further to maintain the issues on their part, all the defendants offered in evidence the testimony of ALBERT E. AKINS, as follows:

By Mr. SANDERS:

Q. What is your name?

A. Albert E. Akins.

Q. You are County Auditor of this County?

A. I am.

Q. And how many terms have you served as county auditor?

A. I am now serving on my second term--the last year of the second term.

Q. How long have you been connected in one way or another, with the taxing department of the county?

A. Well, more or less since 1881. I was deputy in the Treasurer's office for a number of years, before being elected auditor.

Judge PHILLIPS: You need not spend any time qualifying him.

Q. Are you familiar with the methods of returns made by steam railroad companies, and the methods in which their property is assessed and taxes paid on it?

A. I am.

Q. Just describe briefly and generally, how that is done?

(To which question the plaintiff objected; which objection was overruled by the court; to which ruling of the court the plaintiff then and there excepted.)

Judge LAWRENCE: I presume I may have an objection and exception to the remaining questions and answers.

The COURT: Oh, yes, of course.

A. The railroad companies make a report of their personal property annually, to the board of auditors, consisting of
646 the auditors of the counties through which the railroads run.

Q. In each county?

A. They make a statement to each county, and a general statement to the auditors, that they refer to the State Board of Equalization, for its action. The railroad property, as we handle it, consists of real estate and personal property. What I term real estate, I mean that that is taxable upon the real estate duplicate. The personal property consists of roadbed, water and wood stations, and such other realty as is necessary for the daily running of the road.

Q. Is that treated as personalty?

A. That is treated as personalty. They report to us in schedules. One is—

Q. Have you one of the schedules of the Cleveland & Pittsburgh Company?

A. I have one, and I will be more accurate if I run that through. "Schedule A" consists of—

Q. That is the return of the Cleveland & Pittsburgh Company?

A. This is a report that they made to this county for the last year, 1898; assessed in—the meeting was in May, 1898.

Mr. LAWRENCE: Your Honor, I object to that report because it is the action of the Pennsylvania Company, to which the city is not a party; and second, it relates to a time subsequent to the commencement of this suit.

Judge SANDERS: I am only desiring to lay the foundation, to show by records from our office, that ever since we became possessed of this property we have paid taxes upon it.

The court overruled the objection; to which ruling of the court the plaintiff, by counsel, then and there excepted.

Q. The tracks on the real estate are included in the personalty, as I understand it, Mr. Akins?

The COURT: Do you mean the real estate, stripped of the track, would be realty, but the track itself is treated as a structure?

The WITNESS: The track, and more than that. There is a class of real estate that is not used in the operation of the road at all, like as if the railroad company owned a piece of property up here on the street, vacant or otherwise, and which was not used by the railroad company; that would be on the real estate duplicate; but all other property is treated as personalty.

Q. That is, all real estate that is actually devoted to operative purposes?

A. Yes, sir.

647 The COURT: Let me ask: Does it appear that these taxes, levied this way, were paid to the city?

The WITNESS: Their proportion of the rate was; they are all in one.

Mr. LAWRENCE: I want to make a further objection, that the listing of property for taxation is not competent evidence on the question of title, or the question of estoppel; and furthermore, the listing of property for taxation is a matter wholly within the charge of the ministerial officers of the county and state, and the municipal officers, or the municipal corporation has nothing whatever to do, under our laws, or practice, with the listing of property for taxation, or the appraisal of the same, of the return of it by railroad companies or others.

The court overruled the objection; to which ruling of the court the plaintiff, by counsel, then and there excepted.

Q. What I desire to get at is, by what method can it be determined as to what property in the City of Cleveland, is returned in that report—I am asking you as an expert?

Mr. LAWRENCE: We make the same objection to all these questions, your Honor.

The COURT: Yes, that is understood; it is overruled.

(To which ruling of the court the plaintiff, by counsel, then and there excepted.)

A. This report is made up in schedules. Schedule "A" consists of rolling stock—that is, all the cars, of every kind. Schedule "B" consists of buildings and improvements; they are described; their dimensions, their names and where they are located, and they are placed at certain values. Schedule "C" consists of real estate that is used in the daily operation of the road, other than roadbed; that is described—

The COURT: How is the Union Station down here? Is that taxed as real estate or personalty?

The WITNESS: That is taxed as personalty to the various railroads, their proportions set out in a schedule, giving their proportion that they own and the values fixed upon it, in the personal schedule each year. Schedule "D" is personal property, so called; it is road tools, including hand cars and wood and coal, and supplies of all kinds; the amount of money on deposit. Then we

come to Schedule "E"—railway tracks. That schedule gives the number of miles of main track, second track and sidings, that there is in the county, and each corporation of the county through which they run, separately—gives the number of miles in each.

Q. Then that return, if made according to law, would include all of the side tracks and main tracks within the county?

A. Yes, sir.

Q. And switches?

A. Yes, sir, supposed to, and each duplicate shows real estate that is not used in the daily operation of the road, and has a value fixed to it, like any other real estate. The buildings, the Union Depot, and the like, is reported in annual reports like this, and valued separately, and all other property, excepting that which is not used, as I say. Now, the board takes up each schedule—

Q. What board do you speak of?

A. The board of auditors of the counties through which the road runs.

Q. That is made up of the auditor of each county?

A. Yes, sir, an auditor from each county, called together by the auditor of the county where the main office is, and they take up each schedule, approving or disapproving it, passing upon it. Now, when they pass upon it, when they get to Schedule "E," railway property, they pass upon it by assessing so much per mile, the main track so much per mile, the side track so much per mile, and the sidings—or, I would say, the second track—so much per mile, and then the sidings so much per mile.

Q. And do I understand you that that includes all real estate that is used in the daily operation?

A. Yes, sir, as described here (indicating report).

Q. What is that you have there?

A. This is the minutes of the Board, as taking action upon this schedule.

The COURT: Does the same rate of taxation apply to all property?

The WITNESS: Yes, sir.

The COURT: It is a uniform rate as to all person—

The WITNESS: Yes, sir, all personalty. After this is passed upon by the Board, it goes to the State Board, and they equalize it; they may take from this and put upon the other, or vice versa.

The COURT: Whatever the rate is, the city and county and municipality has levied, that applies to this property?

The WITNESS: Yes, sir, the same as all other property. This company has made a very carefully prepared statement; a little more carefully than some railroads, showing in detail this schedule "C," railroad property; it is set out, giving the exact description.

Q. State what the fact is, whether each year during your connection with the Auditor's office, the Cleveland & Pittsburgh Road has filed Schedules and Reports of the general character that you have been talking about?

A. Since I have had any knowledge of it, they have; they have never—

Q. And that has been made the basis of such taxes as they have paid, after they have gone out through this formality that you speak of?

Mr. LAWRENCE: We want the same objection to all these questions, your Honor—and our exceptions.

The COURT: Yes, let it be noted.

A. Yes, sir. I have not gone back into the back years, back of 1890, to see how they were filed, but the same system has been used since that time.

Cross-examination of ALBERT E. AKINS:

By Mr. LAWRENCE:

Q. The schedule that you have been referring to is the schedule for 1898, isn't it?

A. Yes, sir.

Judge SANDERS: I am not offering that schedule in evidence, your Honor.

The COURT: I understand; it is just to explain the system.

Judge SANDERS: That is all.

The COURT: How long has this system existed?

The WITNESS: Since the passage of the law—Section 2772—I think it is 2772—as to the assessment—2744, I am not certain which.

And further to maintain the issues on their part, all the defendants offered in evidence the testimony of EDWIN C. FORBES, as follows:

By Mr. BROOKS:

Q. You may state your name and occupation?

A. Edwin C. Forbes; I am clerk in the County Auditor's office.

Q. Do you recognize these books by your side?

A. I do.

650 Q. You may state separately what each book is?

A. This is the Auditor's duplicate—

Q. Begin at the beginning?

A. This is the Treasurer's Duplicate of 1848; this is the Auditor's Duplicate of 1849; this is the Treasurer's Duplicate of 1850; this is the Treasurer's Duplicate of 1851; this is the Treasurer's Duplicate of 1852; this is the Auditor's Duplicate of 1853; this is the Auditor's Duplicate of 1854; this is the Record of Delinquencies and Tax Sales, 1847 to 1851; this is the District Assessor's Returns, City of Cleveland, Wards One, Two and Three, for 1880.

Q. Those books are kept in the office of the Auditor?

A. Yes, sir.

Q. And are under his control?

A. Under his charge.

Q. You may take the book of 1847, and state whether or not any of the Bath street tract appears as being taxed upon that book?

(To which question the plaintiff objected; which objection was overruled by the court; to which ruling of the court the plaintiff then and there excepted.)

A. Yes, sir; it does.

Q. You may read the entry?

Judge LAWRENCE: I would like an objection and exception to all these questions. (Same ruling and exception.)

Q. You may read the entry as it appears there, and you may state the page of that book?

A. This book is not paged.

Q. You may describe where it appears in the book?

A. There is a piece described, listed to the City of Cleveland, for taxes, as being all north of Bath street, from one to thirty-one lots, inclusive.

Judge LAWRENCE: Perhaps I should state here, as I stated before, that I don't object on the ground that the witness is testifying from the contents of the books. I object on the other ground, that the matter of listing and valuing property for taxation is a matter wholly within the jurisdiction of the county and state authorities, and it is not competent evidence against the city for that reason. (Which objection was overruled by the court; to which ruling of the court the plaintiff then and there excepted.)

Q. Repeat that, please?

A. It is listed under the City of Cleveland, described as being all north of Bath street, from one to thirty-one lots, inclusive.

The COURT: What year is that?

The WITNESS: 1847.

651 Judge SANDERS: The allotment was made in 1845, your Honor, and this was in 1847.

Q. The assessed value is stated there, is it not?

A. There is a valuation here, and the tax for different purposes, state, county and township.

Q. You may state what each is, under each heading?

A. The valuation is given as \$5,145; the state, county and township tax is given at \$42.44 and six mills; a road tax of \$3.85 and nine mills; a total tax of \$46.30 and five mills.

Judge SANDERS: Does that show whether the City of Cleveland paid it?

The WITNESS: There is no payment made of that tax on the duplicate.

Q. What book is that you now have?

A. I have Treasurer's Duplicate of 1848.

Q. You may read the entry as it appears there, of the property as listed, north of Bath street?

A. There is an entry here under the "Cleveland, City of," described as all north of Bath street, from one to thirty-one lots, in-

clusive; the valuation given is \$5,145; state, county and township tax, \$53.50 and eight mills; road tax, \$3.85 and nine mills; total, \$57.36 and seven mills. A return is made by the treasurer, "no property"—in other words, delinquent—no payment made of the tax.

The COURT: That was assessed to the City of Cleveland?

The WITNESS: Yes, sir.

Q. What is this book you now have?

A. This is the Auditor's Duplicate of 1849.

Q. You may read what appears there with reference to Bath street.

A. Listed to the City of Cleveland, described as all north of Bath street, from one to thirty-one lots, inclusive; valuation, \$5,145; state, county, township, and so forth, \$65.68 six mills; road tax, \$3.85 nine mills; delinquent tax, \$78.15 four mills; total tax, \$144.86 nine mills.

Judge SANDERS: What year was that?

The WITNESS: 1849.

Judge SANDERS: And that is taxed to the City of Cleveland?

The WITNESS: Yes, sir; taxed to the City of Cleveland.

Q. What book have you in your hands now?

A. I have the Treasurer's Duplicate of 1850.

652 Q. What entry appears in that duplicate, with reference to this property?

A. In the name of the State of Ohio, described as all north of Bath street, from one to thirty-one lots, inclusive; valuation, \$5,145; state, county, township, and so forth, tax \$71.00 one mill; road tax, \$3.85 nine mills; delinquents and penalties, \$144.86 nine mills; total tax, \$219.72 nine mills.

Q. Is that all that appears in that book with reference to this property?

A. There is a letter "R" following it, in red ink, which indicates that the tax is not paid.

Q. What book have you now?

A. I have the Treasurer's book of 1851.

Q. You may read from the entry with respect to this property?

A. Under the State of Ohio, listed as being all north of Bath street, from one to thirty-one lots, inclusive; valuation, \$5,145; state, county, township and city taxes, \$84.37 eight mills; road tax, \$3.08 seven mills; delinquent tax, penalty and interest, \$219.72 nine mills; total tax on the duplicate, \$307.19 four mills; noted in red ink are these words: "Abate \$189.16, eight mills, being taxes for the years 1849, 1850 and 1851. A. Clark, County Auditor." Following that is marked "Paid, H. B. Payne," showing that the difference between the tax abated and the total tax on the duplicate was paid.

The COURT: That was in 1851?

The WITNESS: Yes, sir; there are marks here indicating that a transfer was made out of this duplicate to the next.

Q. That is all that appears from that duplicate?

A. That is all that appears in 1851.

Q. Do you know whether this property was exposed for sale?

A. The property was offered for sale, and no bid being received, it was forfeited to the State of Ohio for taxes.

Q. Does that appear?

A. That appears on the tax sale record.

Judge SANDERS: Have you that book with you?

The WITNESS: I have.

Judge SANDERS: See what that is?

The WITNESS (referring to book): Tax sales, 1847 to 1851, page 238; it is a list of lands. This book is headed this way—this page:

“A list of lands in Cuyahoga County, returned delinquent for 653 taxes in the year 1848, by the Treasurer of said County, on which are charged the taxes of said year, with the interest and twenty-five per cent penalty on said taxes, and also the simple tax for the year 1849.” This piece appears listed to the City of Cleveland, described as all north of Bath street from one to thirty-one lots, inclusive; a valuation of \$5,145; the amount of tax, \$144.86 nine mills. On page 249, following this list, is the certificate of the Auditor, certifying this to be a correct list of the lands returned by the Treasurer, delinquent, for 1848, and certifying that the amount of taxes charged, and the penalty, and the simple tax for 1849, is correct; also that the foregoing lands will be offered for sale at the Court House, in the City of Cleveland, in said County of Cuyahoga, on the second Monday of January, 1850, by the Treasurer, unless the taxes, interest and penalty are paid before that time. Following that is also a notice, that the foregoing list and notice were published, according to law, in the Cleveland Free Democrat, a paper published in said county, and in general circulation, between the third Monday of November, 1849, and the second Monday of January, 1850.

Q. Do you know whether that list was actually published?

A. I have seen copies of the paper in which this list appeared.

Q. In which these lots appear as advertised?

A. Yes, sir. This property appears to have been offered for sale, and no bid was received. The sale was on January 5th, 1850, and there was no bid.

Q. What book have you there now, Mr. Forbes?

A. I have the Treasurer's Duplicate of 1852.

Q. You may read the entry as it appears there with reference to this property, if any?

A. Appearing in the name of the Cleveland, Columbus & Cincinnati Railway Company, described as all north of Bath street, from one to thirty-one lots, inclusive, no valuation. This went into the railroad company.

Q. Is that the only entry that appears in that volume, with reference to that property?

A. Yes, sir.

Q. What book have you there now?

A. The Auditor's Duplicate of 1853.

Q. What entries appear there with reference to this property?

A. Listed in the name of the Cleveland, Columbus & Cincinnati Railroad Company, described as all north of Bath street, from one to

thirty-one lots, inclusive; listed the same as the other, without valuation.

Q. That is the only entry that appears in that valuation?

A. Yes, sir.

654 Judge SANDERS: That would be the tax of 1852?

The WITNESS: 1852 and 1853 appear without any valuation, or no direct taxes assessed.

Q. What volume is that which you have there?

A. This is the Auditor's Duplicate, Cleveland City, 1854.

Q. You may read the entries there?

A. Listed under the name of the Cleveland, Columbus & Cincinnati Railroad Company, described as all north of Bath street, from lots one to thirty-one, inclusive; without valuation.

Q. Is there any other entry in that book?

A. No other entry.

Q. Now the next volume?

A. That is far as I brought over.

Q. Did you find any of the property listed in the name of the C. & P.—the Cleveland & Pittsburgh Railroad Company?

A. I found property north of Bath street listed to the Cleveland & Pittsburgh Railroad Company.

Q. Where does that first appear?

A. 1854.

Mr. LAWRENCE: Is that the duplicate of 1854?

The WITNESS: Yes, sir; the Auditor's Duplicate of 1854.

Q. What appears there under the name of the Cleveland & Pittsburgh Railroad Company?

A. Under the name of the Cleveland & Pittsburgh Rail Road Company, a piece described as all east of stone pier, to Water street, produced north, commencing at a point, or line, blank feet north of Bath street.

Q. That is all that appears upon that book, is it?

A. Yes, sir; without valuation.

Q. Have you any other duplicates here?

A. I have no other duplicate; I have the Assessor's Return.

Q. You may state whether or not you have examined each duplicate from 1854 down to the present time, down to 1898, in relation to the Cleveland & Pittsburgh and Big Four roads?

A. I have examined the duplicates from 1847 to date, in relation to the property described as all north of Bath street, from one to thirty-one lots, inclusive, and since the year 1852, beginning with that year, it has stood continuously in the name of the Cleveland, Columbus & Cincinnati Railroad Company, down to the present time.

Mr. LAWRENCE: Without valuation?

655 The WITNESS: Without valuation.

Q. With reference to the C. & P. Company, how does it appear?

A. The Cleveland & Pittsburgh Railroad Company, this piece of property, described as all east of stone pier, to Water street, produced north, commencing at a line blank feet north of Bath street,

has been listed continuously, since 1854, in the name of the Cleveland & Pittsburgh Railroad Company.

Mr. LAWRENCE: And that without valuation?

The WITNESS: Without valuation.

Q. You may state whether or not, in looking through these volumes, or other volumes, you have found any valuation placed upon this property?

A. In this District Assessor's Return, I find that the decennial appraisal of 1880, there is a valuation fixed upon the property.

Q. You may state that valuation as it appears in that volume?

A. Under the Cleveland, Columbus & Cincinnati Railway Company, a piece described as all north of Front street, sublots one to thirty-one, inclusive, the assessor fixed a value on the land of thirty thousand dollars; under miscellaneous, \$68,000; a total of ninety-eight thousand dollars. The State Board of Equalization deducted \$7,740, leaving the value \$90,260.

Q. Was there any valuation upon the property of the C. & P. Company?

A. Under the Cleveland & Pittsburgh Railroad Company, described as all east of stone pier to Water street, produced north, commencing blank feet north of Front street, the value of the land \$50,000; miscellaneous, \$36,000; total value of lands, buildings, and so forth, as fixed by the District Assessor, \$86,000. Deductions made by the State Board of Equalization, \$6,800, leaving the total valuation for taxation \$79,200.

Q. Have you the decennial appraisal of 1890?

A. The decennial appraisal of 1890 was destroyed by fire in the Short & Foreman fire; the district assessor's maps and the duplicate were destroyed by fire in 1891; they were there for rebinding.

Q. How about the decennial appraisal for 1870—did you examine that?

A. I didn't look that up.

Judge SANDERS: Mr. Lawrence, I understand that your objection here goes simply to the competency of the facts, and not as to the method of proving them?

Mr. LAWRENCE: Yes.

656 The COURT: Yes; that is understood.

And further to maintain the issues on their part, the defendants offered in evidence the testimony of WALTER R. MCKAY, given on the trial in the U. S. Circuit Court, as follows:

By Judge SANDERS:

Q. What is your name?

A. Walter R. McKay.

Q. Where do you live?

A. In Pittsburgh.

Q. What is your connection with the Pennsylvania Company?

A. Assistant engineer under Mr. Thomas Rodd, chief engineer.

Q. How long have you been connected with the company?

A. With the Pennsylvania Company?

Q. Yes?

A. Since 1872.

Q. During what portion of the time, if any, have you had to do with the matter of tax returns made by the company?

A. From the year 1878 up to the present time—up to 1898.

Q. You now have charge of that matter?

A. Yes, sir; charge of all the tax matters.

Q. From 1878—is that the date you began the tax matters?

A. Yes, sir; that is the date I began with the Pennsylvania Company.

Q. When did you begin having charge of tax matters?

A. For the Cleveland & Pittsburgh road, in about 1886.

Q. And from 1886 up to the present time have you made the reports that were made, to the auditors of Cuyahoga County, in respect to the property of the company in this county?

A. Yes, sir; I always prepare all those returns, all those schedules, for each county.

Q. And in making up those schedules, you made them on the kind of blanks that Mr. Akins displayed here, this morning?

A. Yes, sir; that small blank that he had here.

Q. With regard to this Bath street property, so called, so far as it is claimed by the Cleveland & Pittsburgh Company, state whether in each case of the returns you have made, you included that property?

(To which question the plaintiff objected; which objection was overruled by the court; to which ruling of the court the plaintiff then and there excepted.)

Mr. BAKER: If the court will allow us, we will take an exception and objection to each question and answer.

A. I included all that property from the year 1886 down to 1898, all the Bath street property.

657 The COURT: What does Mr. McKay mean by "all the Bath street property."

The WITNESS: All the property claimed by the Cleveland & Pittsburgh Railroad Company—

The COURT: That is not much more definite than the auditor's return.

The WITNESS: Well, I can give the details.

Q. How did you arrive at or get the information about what the property was?

(Same objection, ruling and exception.)

A. The return is composed of so much side track and so much main track and the buildings on there, the freight houses, and the land occupied by the freight houses; that, in substance, forms the total of the property belonging to the Cleveland & Pittsburgh Company.

Q. If I understand you, what you mean to state is that in that return you included all the property upon which the company has its buildings, and its tracks of all kinds?

(Same objection, ruling and exception.)

A. Yes, sir; all the property occupied by the Cleveland & Pittsburgh Railroad, for railroad purposes, in front of that Bath street tract.

Cross-examination of WALTER R. McKAY.

By Mr. LAWRENCE:

Q. Have you your return there for 1886?

A. Yes, sir.

Q. Let me see it, please. (Witness hands book to Mr. Lawrence.) Will you let me see the return to the auditor for that year?

A. That is the copy of the return to the auditor of Cuyahoga County; there is one to each county, for that year.

Q. I wish you would take this which you say is a copy of the return to the auditor of Cuyahoga County, for 1886, and explain what items in that relate to the Bath street property, so called?

A. Do you mean explain on this map (indicating Exhibit No. 6)?

Q. No; I mean explain it from your return there, what items relate to this property?

A. The first item would be about three-tenths of a mile of main track.

Q. Read the item that includes it; read from your return?

A. Under Schedule "A," length of main track—it is in part of the third ward.

Q. Read what it says there in your return?

A. Well, just the side track—the main track in the third ward is all listed in one lump—fifty-five hundredths of a mile.

658 Q. You have listed fifty-five hundredths of a mile of main track?

A. In that ward?

Q. In the third ward?

A. Yes, sir.

Q. Now go on?

A. And there is three and fifty-one hundredths miles of side track.

Q. In the third ward of Cleveland?

A. Yes, sir; and then in another schedule there is the ground designated as local freight yard.

Q. Read the entry that you have got about that?

A. Local freight yard, two and four-tenths acres, \$11,500.00 an acre, making \$27,600.00.

Q. In what ward is that?

A. It is listed in the third ward, here.

Q. Are those all the items listed in the third ward of the City of Cleveland?

A. No; there is a freight delivery station and a freight receiving station, which are those two freight houses.

Q. What are those buildings?

A. Two large buildings, one is listed at \$7,000 and one \$13,500.

Q. Then, as I understand you, you have put in those two structures, you have put in all the main track in the third ward in one item—half a mile of that?

A. Yes.

Q. And you put in three and a fractional part of a mile—three miles and a fraction—of side track in the third ward?

A. Yes, sir; existing at that time, in 1886.

Q. The third ward of Cleveland, as you know, I suppose, includes all the territory lying between Seneca street and the river?

A. Yes, sir; it includes a lot of territory.

Q. And in those items you include all the main track and all the side tracks that you have in that ward?

A. Yes; that is all that belongs to the Cleveland & Pittsburgh Railroad.

Q. And all the real estate that you have included is the two and four-tenths acres?

A. The tracks, the roadbed—the item of tracks carries the roadbed with it, under the statute.

Q. I am asking you about your return, not what the statute says. In your return you have included nothing but those three items that I have named, that pertain to the tracks and real estate?

A. Yes, sir; on the face of the return it is listed as side track; that is the way the auditor of state asks for it.

Q. And that is the same way you have been making your returns ever since?

A. Yes, sir; ever since, all schedules have been made up in that way from 1886 down.

659 Redirect examination of WALTER R. McKAY.

By Judge SANDERS:

Q. Do you know what the rate of city tax levy was for the year 1893?

A. Yes, sir.

(Plaintiff objects to the way of seeking to prove the fact, but not to its competency. The objection was overruled by the court; to which ruling of the court the plaintiff then and there excepted.)

Q. It is made on the books in the auditor's office?

A. Yes; I believe it is; I got the rate from the auditor's office.

Q. Would not the auditor's books show what the city received upon this property?

A. It would show the total for the City of Cleveland.

Mr. LAWRENCE: I object to this witness testifying to what the city received; that is not within his knowledge. I would agree with them what the rate of taxation was for that year, if I thought it was competent here; but I object to their proving that one fact.

(The court overruled the objection; to which ruling of the court the plaintiff then and there excepted.)

A. (continued). In 1893 the rate was one thirty-six and a half on the hundred, for municipal purposes only; the total rate was two twenty-seven, nine, per cent. for 1893.

Q. Have you the municipal rate for any other year than 1893?

(Same objection, ruling and exception.)

A. I have it for 1897.

Q. You may state it?

(Same objection, ruling and exception.)

A. The municipal rate in 1897 was one thirty-six on the hundred.

Q. You haven't it for any other year?

A. No, sir; just those two years.

And further to maintain the issues on their part, defendants, The Cleveland & Pittsburgh Railroad Company and The Pennsylvania Company, offered in evidence Communication of Charles Whittlesey to the Council of the City, as follows, to-wit:

Communication of Chas. Whittlesey to the Council of the City.

BATH STREET, Sept. 21, 1845.

To the Hon. the Common Council of the City of Cleveland:

The subscriber having recently been informed by a public advertisement that the City of Cleveland contemplates the granting of leases to individuals for private use of a part or all of the space commonly known as Bath Street—representing in behalf of the heirs of Thos. Lloyd a claim to the ground thus offered for lease presents the following memorial and protests in opposition to said contemplated leases.

660 In the year- 1836 & '7 a proposition was made to the Council for an examination of said claim with a view to an adjustment and compromise which paper is probably in the files of the City.

It was then proposed that so much of said space as should be deemed necessary by the Council for public purposes should be surveyed and established as a street the legal requisites for the establishment of Bath Street never having been complied with. The remainder of the space to be divided into lots (word) as a street and divided equitably between the grantees of the Trustee deed and the City to be held in fee simple.

By a plan of division and improvement then submitted it was thought that the City might thus acquire in its corporate right a valuable property, the limits of Bath Street be legally defined and made certain to the public, and the rights of individuals made more valuable.

The proposition was not acted upon at the time nor since and the City have during the past year occupied said ground not as a public street but as corporate property receiving rent therefor.

In order to place the position of the claim which I represent fully before the Council before they proceed farther in the disposal of this ground for private purposes and to take away hereafter a plea of want of notice I make the following concise state- of the legal points involved for their consideration.

1. Bath Street if it exists as a public highway does not by survey and record according to law but by general dedication none of

the requisite formalities for laying out streets have been observed according to the statutes in force at the time.

The limits of the dedication are to be decided by the terms of the dedication and not by usage.

2. Unless the dedication operates with greater force than a regular surveyed and acknowledged legally recorded plat the rights of the public are mere easements; they are not an interest in the soil and those easements or rights of way are not in the City alone, but in the County and the public generally—such is the force of the several statutes relating to roads and highways.

3. If the City had all the rights of the public concentrated in herself she will be limited in space to the ground included in Spafford's description, her interest not being in the nature of realty to which the increase of land can attach, but to the naked title remaining in the original holders or their assignees or grantees.

661 4. Within the space that shall be proven to be a street by dedication, the City has not power to sell, convey or even to lease said public ground.

For when that is done she is acting not in a municipal but an individual capacity virtually declaring that the ground is not necessary for public uses and is occupying it for purposes in derogation of the public right of way.

5. The deed of the Trustees to Lloyd conveys whatever legal title the Trustees themselves had as decided by the Circuit Court of the United States.

6. That naked title is alone sufficient to enable the present holders to restrain the city from using this ground in a way different from the grant or dedication.

7. In case the grantees of the Trustees of the Land Company recover possession of any part the City will be required to account for moneys received from the sale or lease of the premises.

This is as the subscriber is informed by eminent counsel the legal aspect of the case and it is considered by the parties interested as well worthy of litigation. The argument for and against the positions above taken are many and cannot be presented in this memorial, but it appears to be a case where by a mutual good understanding and compromise both the parties concerned and the public would be in a better condition than they are now.

It is supposed that a supervisory court will look into the object to be attained and if the ordinances and laws of the City respecting this property and the proceedings under them appear to have been intended merely to enable the City to acquire property in her corporate or individual right they will be so far held to be inoperative and invalid.

Cleveland, Feb. 21, 1845.

CHARLES WHITTLESEY,

For the Heirs of Thomas Lloyd.

And further to maintain the issues on their part, defendants, The Cleveland & Pittsburgh Railroad Company and the Pennsylvania

Company offered in evidence Communication of S. Williamson, Esq., in relation to Bath St. suits, as follows, to wit:

To the Mayor & Common Council of the City of Cleveland:

Some of the persons interested in the prosecution of the suits of Lessee of Lloyds vs. the City of Cleveland to recover possession of Bath Street have suggested that some arrangement in compromise of those suits might perhaps be made that would be for the
662 interest of the City and request that a Committee might be appointed by the Council to confer with them upon the subject.

What the character of the propositions they propose to submit are I am not informed, but am of opinion that no injury to the City will be sustained by the appointment of a judicious committee to consult on the subject.

S. WILLIAMSON,
Att'y for City in Those Cases.

(Endorsed on back: Communication of S. Williamson, Esq., in relation to Bath St. Suits—Committee appointed are Messrs. Case R. Wood & S. Williamson.)

I, Howard Burgess, City Clerk of Cleveland, State of Ohio, in whose custody original communications to the Council of the City of Cleveland are required by law to be kept, do hereby certify that the foregoing copy is taken and copied from the original communication in my possession; that said foregoing copy has been compared by me with said original communication, and that the same is a correct copy of said original communication.

In Testimony Whereof, I have hereunto subscribed my name and affixed my seal of office at the City Hall in the City of Cleveland this 6th day of March, A. D. 1899.

[SEAL.]

HOWARD H. BURGESS,
City Clerk.

And further to maintain the issues on their part, defendants, The Cleveland & Pittsburgh Railroad Company and The Pennsylvania Company, offered in evidence Resolution found in Journal E of the Council Proceedings of the City of Cleveland, page 102, as follows, to-wit:

"MARCH 6, 1849.

Communication from S. Williamson, attorney of city in case of Lessee of Lloyds vs. City of Cleveland, recommending appointment of a conference committee at the suggestion of the persons interested. Approved, and the following special committee appointed: Messrs. Case, R. Wood and S. Williamson.

And further to maintain the issues on their part, defendants, The Cleveland & Pittsburgh Railroad Company and The Pennsylvania Company thereupon offered and read in evidence the following Communication:

"To the Mayor & Common Council.

GENTLEMEN: Messrs. Andrews & myself agreed with A. Kelley, Esqr. that if he would come from Columbus to this Court as a witness for the City in the case of Wm. B. Lloyd & others vs. the City brought for the recovery of possession of Bath Street we would see that his expenses were paid. I accordingly paid him twenty
663 Dollars today. He has been in attendance in court a week.

I respectfully request that the amount I paid Mr. A. Kelley may be allowed me.

S. WILLIAMSON.

Feb. 27, 1847.

(Indorsed on back as follows: "City Attorney, Communication, ordered to be filed Feby. 27, '47.")

I, Howard Burgess, City Clerk of the City of Cleveland, State of Ohio, in whose custody original communications to the Council of the City of Cleveland are required by law to be kept, do hereby certify that the foregoing copy is taken and copied from the original communication in my possession; that said foregoing copy has been compared by me with said original communication, and that the same is a correct copy of said original communication.

In Testimony Whereof, I have hereunto subscribed my name and affixed my seal of office at the City Hall in the City of Cleveland this 6th day of March, A. D. 1899.

[SEAL.]

HOWARD BURGESS,

City Clerk.

And further to maintain the issues on their part, defendants, The Cleveland & Pittsburgh Railroad Company and The Pennsylvania Company, offered in evidence the following provision from Volume 19 of the U. S. Statutes at Large, page 133, being an item in the appropriation bill for the year 1876:

"For repair of east pier at Cleveland, Ohio, \$8,000.00; and the Secretary of War is hereby authorized to agree with the Cleveland & Pittsburgh Railroad Company for such use and occupancy of said pier as is consistent with the public interest, upon such terms and conditions as he deems reasonable and just. And in case such Railroad Company shall neglect or refuse to make an agreement satisfactory to the Secretary of War, upon a certificate of that fact to the Attorney General it will be the duty of the latter officer to enforce the rights of the United States in the premises by appropriate action."

Mr. BAKER: What do you claim by this?

Judge SANDERS: The recognition of the Cleveland & Pittsburgh road.

Mr. BAKER: The United States had built and owned a pier, and they leased it to the Cleveland & Pittsburgh Railroad, to use it, by two contracts, or three.

The COURT: It is a recognition that the Cleveland & Pittsburgh Railroad occupied this ground openly, claiming to own it. Of course it wouldn't bind the city.

Judge SANDERS: Under that a contract was made, which I will now offer in evidence.

And further to maintain the issues on their part, defendants, The Cleveland & Pittsburgh Railroad Company and The Pennsylvania Company, offered in evidence certified copy of the contract between The Cleveland & Pittsburgh Railroad Company and the United States, dated February 17, 1877, said contract being as follows, to-wit:

UNITED STATES OF AMERICA,
WAR DEPARTMENT,
WASHINGTON CITY, *January 26, 1899.*

I Hereby Certify that the papers hereto attached are true copies of papers on file and on record in the office of the Chief of Engineers, U. S. Army.

JOHN M. WILSON,
Brig. Gen., Chief of Engineers, U. S. Army.

Be it Known that John M. Wilson, who signed the foregoing certificate, is the Chief of Engineers, United States Army, and that to his attestation as such full faith and credit are and ought to be given.

In Witness Whereof I have hereunto set my hand, and caused the seal of the War Department to be affixed, on this twenty eighth day of January one thousand eight hundred and ninety nine.

[SEAL.]

R. A. ALGER,
Secretary of War.

OFFICE GEN'L SUP'T PUBLIC WORKS,
CLEVELAND, *June 30, 1856.*

COLONEL: I have been applied to for my assent to the construction of a wharf in the rear of the east pier of this harbor, & north of the breakwater which extends from the office eastward. The wharf is to rest upon piles to be driven into the ground which is covered by the waters of the lake, & is to extend over the pier to the back of the parapet wall, & will be of the same height of the latter. The portion of the pier proposed to be covered is a mere embankment of rubble stone sloping down from the parapet to the water, & was originally placed there for the protection of the pier. It is not proposed to take down any portion of the parapet, but to construct the wharf up to it, upon the same level.

665 It is conceived that there can be no objection on the part of the Government to this proposition. The pier, instead of being in any manner injured by the construction, will rather be strengthened & protected by it, & additional facilities will thereby be afforded to the port for commercial purposes. It is not asked that the exclusive occupation of any part of the pier be granted, but merely the right of transit over it may be enjoyed in common with the public at large.

I have stated to the parties that I did not think that there would

be any objection on the part of the Govt., but I did not feel quite authorized to grant the permission asked, without consulting the Bureau on the subject.

With the exception that these parties do not ask to take down any part of the parapet wall, the privilege sought is precisely the same as that lately granted to the Pittsburgh Rail Road Company the good effects of which, in affording extended accommodation to the whole shipping interest of the port is already strikingly apparent.

I therefore respectfully recommend that the permission asked for be granted, under the same limitations and restrictions as those prescribed in your letter of the 29th of October 1855, and approved by the Secretary of War. I am Sir

Very respectfully, Your Obt. Serv't.

HOWARD STANSBURY,
Capt. Top'l Eng'rs.

Col. J. J. Abert, Chief Bureau Top'l Engineers, Washington.

BUREAU OF TOPOGRAPHICAL ENGINEERS,
WASHINGTON, *July 3d, 1856.*

Capt. H. Stansbury, Corps T. Eng'rs, Cleveland, Ohio.

SIR: Your letter of the 30th June has been received. A drawing exhibiting the part of the pier desired to be used, and its correct position, is necessary to a proper understanding of the proposal in your letter.

Respectfully Sir Your Obt. Serv't.

J. J. ABERT,
Col. Corps T. E.

OFFICE GEN. SUPT. PUBLIC WORKS,
CLEVELAND, *July 8, 1856.*

COLONEL: I have the honor to acknowledge the receipt of your letter of the 3d inst. The drawing therein required is herewith transmitted. I am, Sir

Very Respectfully Your Obt. Serv't.

HOWARD STANSBURY,
Capt. Top'l Eng'rs.

666 Col. J. J. Abert, Chief Bureau Top'l Eng's, Washington.

BUREAU TOPOGRAPHICAL ENGINEERS,
WASHINGTON, *July 11th, 1856.*

Capt. H. Stansbury, Corps T. Eng'rs, Cleveland, Ohio.

SIR: Your letter of the 8th instant has been received. I see no objection to permitting the construction of the wharf, under the limitations & restrictions of my letter of the 29th October 1855.

Respectfully Sir, Your Obt. Serv't-

J. J. ABERT,
Col. Corps T. E.

BUREAU TOPOGRAPHICAL ENGINEERS,
WASHINGTON, *October 29th, 1855.*

Capt. H. Stansbury, Corps T. Eng'rs, Cleveland, Ohio.

SIR: Your letter of the 1st Sept'r was duly received and submitted to the War Department as follows:

"It is respectfully recommended that permission be given to remove the wall referred to provided:

1st. To be done without expense to the U. S.

2nd. To be done under the U. S. Engineer, Capt. Stansbury.

3rd. And that said removal should create no right of property, or in any wise injure the possession and control of the U. States.

J. J. ABERT,
Col. Corps T. E."

"Approved as recommended.

JEFFERSON DAVIS,
Secretary of War."

War Dept., Oct'r 27th, 1855.

Respectfully Sir, Your Obt. Serv't.

J. J. ABERT,
Col. Corps T. E.

Know all men by these presents, that Whereas the United States is the owner and occupant of a strip of land forty-five (45) feet in width, more or less, at the Port of Cleveland, Ohio, extending from the Lake Shore Railroad Company's Bridge on the south to the end of the East Pier, and bounded on the West by the River face of the East Pier;

667 And Whereas the Cleveland and Pittsburgh Railroad Company desires to use and occupy that portion of said strip and the pier thereon which extends from said southern boundary to the northerly end of the dock of said last named Company;

And whereas by an Act of Congress approved August 14, 1876, entitled "An Act making appropriations for the construction, repair, preservation, and completion of certain public works on rivers and harbors, and for other purposes," there was appropriated "for repair of east pier at Cleveland, Ohio, eight thousand dollars," and the Secretary of War was "authorized to agree with the Pittsburgh and Cleveland Railroad Company," (meaning the Cleveland and Pittsburgh R. R. Company aforesaid,) "for such use and occupancy of said pier as is consistent with the public interests, upon such terms and conditions as he deems reasonable and just;"

And Whereas the matter of the use and occupancy of said pier by said Company has recently been referred for examination and report to a Commission appointed by the President of the United States, and consisting of Lieut. Col. C. E. Blunt, U. S. Engineers, Hon. Pen. G. Watmough, Collector of Customs at Cleveland, Ohio, and Hon. George Willey, U. S. Attorney for the northern district

of Ohio, and the said Committee has recommended certain terms and conditions of and for such use and occupancy hereinafter set forth, and the same have been approved by the Secretary of War, and are acceptable to said Company:

Now therefore, it is hereby understood, covenanted, and agreed, by and between J. D. Cameron, Secretary of War, party of the first part, and the Cleveland and Pittsburgh Railroad Company, party of the second part, as follows, to wit:

First. That the party of the first part shall proceed to expend upon the repairs of said Pier the sum appropriated therefor, or so much thereof as may be needed to prevent the pier or material thereof from falling into or obstructing the channel and substantially upon the plan suggested, and estimated for by the Engineer of the party of the second part, and approved by the said Lieut. Col. C. E. Blunt.

Second. That the party of the second part shall henceforth have and enjoy the use and occupancy of said strip of land and pier upon the same, from said southern boundary to the said north end of the dock of said party of the second part, for the purpose of receiving and shipping merchandise; such use and occupancy to continue so long as the party of the second part shall on its part perform well and truly the terms and conditions of this agreement.

Third. That in consideration of such use and occupancy and as long as the same may be continued, the party of the second part shall and will keep said portion of said pier in good repair to the satisfaction of the U. S. Engineer in charge of the public works in Cleveland Harbor, or such other engineer officer as may be designated by the Chief of Engineers, U. S. Army; and shall and will keep the River along the said portion of said pier free from any obstructions arising from the breaking or washing away or decay of the same or from injuries thereto; and shall and will keep the said portion of said pier free and clear for right of way at all times for the United States or its officers, agents, or employés, and for teams and materials for government purposes, as well as for the continued use of the Custom House building, now being, or to be, on the said premises:

Fourth. That the party of the second part shall not obstruct or interfere with any right of way or easement which the City of Cleveland may have, if any, or which the public may now enjoy, to or upon the said premises.

Fifth. That the party of the second part shall so arrange and use the said portion of said pier so occupied by them as aforesaid as not to hinder or interfere with the rights of vessels to lie alongside and moor thereto, for temporary reasons and purposes, as the same have been heretofore enjoyed by vessels, free of all hindrance, objections or charges:

Sixth. That a violation by the party of the second part of either or any of the conditions or agreements herein expressed and agreed to shall operate as a forfeiture of all the rights and privileges secured to the said party in and by this agreement.

Seventh. That, upon the party of the second part ceasing at any time to use and occupy the said portion of said pier, the same shall be put and left by the said party in as good condition as to construction and repair as the same shall be in when the repairs put upon it by the United States under the Act of Congress aforesaid, (together with such repairs as shall require to be added by the party of the second part, provided the sum appropriated by said Act shall prove insufficient to fully repair the same), shall be completed.

In witness whereof, the said party of the first part has subscribed this instrument with his hand and has set thereto the Seal of the War Department, and the party of the second part has subscribed the same by its President and Secretary and has set thereto its corporate seal on this 17th day of February, 1877.

THE CLEVELAND AND PITTSBURGH
R. R. CO.,
By J. H. McCULLOUGH, *President*.

In presence of
Attest:

G. A. INGERSOL, *Secretary*.
[SEAL.]

J. D. CAMERON,
Secretary of War.

In presence of
H. T. CROSBY, [SEAL.]
Chief Clerk.

Whereas, the United States on the one part and the Cleveland and Pittsburgh Railroad Company on the other part have entered into the foregoing written agreement dated the 17th day of February, 1877, with reference to the occupancy of a strip of land forty-five feet in width, more or less, at the port of Cleveland, Ohio, extending from the Lake Shore Company's bridge on the south to the end of the East Pier and bounded on the west by the river face of the East Pier.

And whereas the Pennsylvania Company is in the possession and use of the property of the said Cleveland and Pittsburgh Company under and by virtue of a lease of the said property to the Pennsylvania Company assigned.

Now, therefore, in consideration of the premises and divers others considerations received from the parties to said agreement.

The said Pennsylvania Company hereby agrees with the said United States that it accepts and ratifies said first mentioned agreement and all the provisions thereof the same as if it had been made a party thereto, and binds itself, its lessees and assigns, to fulfill, and that the said Cleveland and Pittsburgh Railroad Company shall fulfill all the conditions of said agreement on the part of said Cleveland and Pittsburgh Railroad Company to be fulfilled.

In witness whereof the said Pennsylvania Company has by its Vice President and Assistant Secretary subscribed this instrument

and caused its Seal to be affixed hereto this 17th day of February, 1877.

THE PENNSYLVANIA COMPANY,
By J. H. McCULLOUGH,
1st Vice President.

670 Attest:

JNO. C. CONN,
Ass't Sec'y.

[SEAL.]

J. D. CAMERON,
Secretary of War.

In presence of

H. T. CROSBY, [SEAL.]
Chief Clerk.

(Endorsed:) Office of the Secretary War Department, Jan. 27, 1899. 432-1.

And further to maintain the issues on their part, defendants The Cleveland & Pittsburgh Railroad Company and The Pennsylvania Company, offered in evidence Report of Judiciary Committee in relation to taxes assessed on the Bath street property, same being as follows, to-wit:

To the Hon. Mayor and Com. Council of the City of Cleveland:

The Committee on Judiciary to whom was referred the resolution relative to the taxes levied on the Bath street property, beg leave to submit the following report:

That said committee, in pursuance to the authority granted in said resolution, procured the aid of counsel, with a view of thoroughly investigating the matter. That with the aid and advice of counsel your committee have carefully investigated the matter, and the result of such examination and action is as follows:

First. That the Bath street property was listed on the tax roll, and notice given for the sale of the same for taxes in the words and figures following, to-wit: "All north of Bath street from lots No. 1 to No. 31 inclusive, value \$15,145.00. Total tax \$144.86.9."

2. That the said property is subject to taxation when used for any other purposes than for streets.—See Ohio Laws, Vol. 44, page 85, Sec. 1st and page 86 1st 3 & 8.

3. That the City of Cleveland, to which the property was listed, is liable for the tax, legally assessed, although the property may have been sold and the purchaser liable over to the City for the same.

4th. That by the terms of the agreement entered into between the City of Cleveland and the C. C. & C. R. R. Co. it is substantially agreed that the said R. Road Company shall pay these taxes.

5th. That the tax is believed to be illegal in this that the description is bad, not being sufficiently definite, and because it includes a large portion of street not taxable.

671 In this view of the case your committee conferred with several of the directors of the said Railroad, and it was agreed that on the day of sale, notice should be given to the purchasers, of the illegality of said tax, and in case no one purchased, then the whole matter should be laid before the Auditor of State with a view of obtaining a remission of the said tax in whole or in part. This course was accordingly pursued, notice was given, no one saw fit to bid, and consequently no sale was effected. In case any one should bid, it was understood that the Railroad Co. should become the purchaser and pay the taxes.

Your Committee have no doubt but what the said R. R. Co. will lay the matter before the Auditor of State, and settle the matter (so as to be satisfactory to them) without any further expense or trouble to the City, as they are bound to do by the terms of their agreement with the City.

Respectfully submitted,

D. N. CROSS,
Chairman of Judiciary Com.

(Indorsed on back: "Report of Judiciary Com. in relation to taxes assessed on the Bath street property; accepted Feb'y 5, '50.")

I, Howard Burgess, City Clerk of the City of Cleveland, State of Ohio, in whose custody original reports to the Council of the City of Cleveland are required by law to be kept, do hereby certify that the foregoing copy is taken and copied from the original report in my possession; that said foregoing copy has been compared by me with said original report and that the same is a correct copy of said original report.

In testimony whereof, I have hereunto subscribed my name and affixed my seal of office at the City Hall in the City of Cleveland this 6th day of March, A. D. 1899.

[SEAL.]

HOWARD H. BURGESS,
City Clerk.

And further to maintain the issues on their part, said defendants The Cleveland & Pittsburgh Railroad Company and The Pennsylvania Company, offered in evidence report of judiciary committee in favor of paying four judgments for costs in suits Lessee of Lloyds vs. City, which are as follows, to-wit:

17120.

No. 26.

LESSEE OF W. M. B. LLOYD

vs.

CITY OF CLEVELAND.

Ejectment.

Oct. Term 1849, judgt. for plff. Dams.....	\$0.06	
Plff's costs	15.70	
Def't's costs	27.87	
		<u>\$43.63</u>
672 Int. from Oct. 2, 1849.....	.97	
Increase costs	1.67	
		<u>\$46.27</u>
R. Road to pay.....	\$11.55	
	1.67	
		<u>\$13.22</u>

Same 17,121 vs. No. 27 Same.

Oct. term Dams.....	\$0.06	
Plff's costs	13.60	
Def't's costs	2.31	
Int. fr., Oct. 1849.....	.40	
Increase costs	1.19	
		<u>\$17.56</u>
R. Road to pay.....	\$8.88	
	1.19	
		<u>\$10.07</u>

Same 17,121 vs. No. 28 Same.

Oct. term Dams.....	\$0.06	
Plff's costs	13.60	
Def't's costs	2.31	
		<u>\$15.97</u>
In. fr. Oct. 2, '49.....	.40	
Increase costs	1.19	
		<u>\$17.56</u>
R. Road to pay.....	\$8.88	
	1.19	
		<u>\$10.07</u>

Same 18-442 vs. Same.

Oct. term Dams.....	\$0.06	
Plff's costs	16.22	
Def't's costs	1.11	
	<u>\$17.39</u>	
Int. fr. Oct. 2, '49.....	.44	
Increase costs	1.21	
	<u>\$19.04</u>	
		<u>\$100.43</u>
R. Road	\$6.03	
673	1.21	
	<u>\$7.24</u>	
Total.....	\$40.60	
13.22		
10.07		
10.07	Amt. of costs prior to contract with R. Road,	59.83
7.24		
	<u>\$14.60</u>	
	Amt. to be pd. by R. Road, costs since con-	
	tract	40.60
		<u>\$100.43</u>

The Judiciary Committee to whom was referred the claim against the City for costs in the above entitled causes, beg leave to report that the whole amount of taxable costs, as above shown is \$100.43. That of this amount, they are of opinion that the C. C. & C. R. Road Co., under this agreement with the City, ought to pay \$40.60, the costs which have accrued since said agreement was entered into, the balance \$59.83 (cost accruing prior to said agreement) to be paid by the City.

Respectfully submitted,

D. W. CROSS,
Char. Judiciary Comt.

(Indorsed on back as follows: "Report of Judiciary Committee in favor of paying four judgments for costs in suits Lessee of Lloyds vs. City, Common Pleas. Accepted March 15th, 1850.")

I, Howard Burgess, City Clerk of the City of Cleveland, State of Ohio, in whose custody original reports to the Council of the City of Cleveland are required by law to be kept, do hereby certify that the foregoing copy is taken and copied from the original report in my possession; that said foregoing copy has been compared by me with said original report and that the same is a correct copy of said original report.

In testimony whereof, I have hereunto subscribed my name and affixed my seal of office at the City Hall in the City of Cleveland this 6th day of March, A. D. 1899.

[SEAL.]

HOWARD H. BURGESS,
City Clerk.

And further to maintain the issues on their part, defendants The Cleveland and Pittsburgh Railroad Company and the Pennsylvania Company offered in evidence contract between The
674 Cleveland & Pittsburgh Railroad Company and Secretary of War, with relation to the right to cut down the pier. A true copy of same is as follows, to-wit:

Whereas, By an Act of Congress approved August 14, 1876, entitled "An act making appropriations for the construction, repair, preservation and completion of certain public works on rivers and harbors, and for other purposes," the Secretary of War was "Authorized to agree with the Pittsburgh and Cleveland Railroad Company," (meaning the Cleveland and Pittsburgh Railroad Company) "for such use and occupancy" by said Company of the East Pier at Cleveland, Ohio, "as is consistent with the public interests, upon such terms and conditions as he deems reasonable and just." And

Whereas, Under authority of the said Act the Secretary of War on the 17th day of February, 1877, entered into an agreement with the Cleveland and Pittsburgh Railroad Company for the use and occupancy by said Company of a strip of land forty five feet in width extending from the Lake Shore and Michigan Southern Railway Company's Bridge on the South to the Northerly end of the dock of said Company, and bounded on the west by the river face of the east pier said strip of land being the property of the United States; and

Whereas, The Cleveland and Pittsburgh Railroad Company has applied to the Secretary of War for permission to lower the Northern part of the pier on said strip of land so that the floor line of said pier shall be for its entire length on said strip of land of uniform height similar to that immediately North of the bridge of the Lake Shore and Michigan Southern Railway Company, and the Chief of Engineers United States Army, recommends that the request be granted.

Now, therefore, this is to certify that the Secretary of War has granted permission to the Cleveland and Pittsburgh Railroad Company to cut down a portion of said pier on said strip of land so that the floor line of said pier shall be for its entire length on said strip of land of uniform height similar to that immediately north of the bridge of the Lake Shore and Michigan Southern Railway Company, upon the following conditions:

That the work of cutting down said pier shall be done under the supervision of the Engineer Officer of the United States Army in charge of the locality.

Witness my hand this 13th day of March, 1893.

DAN'L L. LAMONT,
Secretary of War.

The conditions of this instrument are hereby accepted by The
Cleveland and Pittsburgh Railroad Company, by R. F.
675 Smith, its President thereunto legally authorized this ninth
day of March, 1893.

R. F. SMITH, *President*.

In presence of:

F. C. THAYER.

G. A. INGERSOLL.

Office, Chief of Engineers, U. S. A.

Incl. 7 of 1054.

Rec'd Office Chief of Engrs. Mar. 10, 1893.

(Endorsed: 2126. War Dep't. 514-7 1893. Entered in Con.
Book F. Page 486 Auditor's Office July 11, 1893.)

And further to maintain the issues on their part, defendants The
Cleveland and Pittsburgh Railroad Company, and the Pennsylv-
vania Company offered in evidence Contract between Secretary of
War and The Cleveland & Pittsburgh Railroad Company, dated
May 15, 1895. A true copy of same reads as follows, to-wit:

Whereas, By an Act of Congress approved August 14, 1876, en-
titled "An act making appropriations for the Construction, Repair
Preservation and Completion of certain Public Works on Rivers and
Harbors and for other purposes the Secretary of War was "Au-
thorized to agree with the Pittsburgh and Cleveland Railroad Com-
pany" (meaning the Cleveland and Pittsburgh Railroad Company)
"for such use and occupancy" by said Company of the East Pier at
Cleveland, Ohio, "As is consistent with the public interests, upon
such terms and conditions as he deems reasonable and just."

And, Whereas, Under Authority of the said Act, the Secretary of
War on the 17th day of February, 1877, entered into an agreement
with the Cleveland and Pittsburgh Railroad Company for the use and
occupancy by said Company of a strip of land 45 feet in width ex-
tending from the Lake Shore and Michigan Southern Railway Com-
pany's bridge on the south to the northerly end of the dock of said
Company and bounded on the west by the river face of the East
Pier—said strip of land being the property of the United States, and
said northerly end of the dock being fixed by the curve of twelve
feet depth of water, which curve was established by the Secretary of
War in 1879, as the limit to which docks and piers might be ex-
tended into the harbor;

And whereas, on February 1, 1895, the Secretary of War estab-
lished a new harbor line for the portion of Cleveland Harbor, which
extends further out than the twelve foot curve;

And whereas, on the 13th day of March, 1893, the Secretary of
War granted permission to the Cleveland and Pittsburgh
676 Railroad Company to cut down a portion of said pier on said
strip of land so that the floor line of said pier should be for
its entire length on said strip of land of uniform height similar

to that immediately north of the bridge of the Lake Shore and Michigan Southern Railway Company, which work has since been completed.

And whereas, The Cleveland and Pittsburgh Railroad is proposing to at once improve and occupy its property out to the said Harbor line established February 1, 1895, and desires to make use of its frontage on the Cuyahoga River, and to use and occupy the said strip of 45 feet in width from the northerly end of its present dock to the harbor line as now established, and to cut down a further portion of said pier so that the floor line of said pier shall be for its entire length on said strip of land of uniform height as contemplated in the license dated March 13, 1893.

Now, Therefore, It is hereby agreed by and between Daniel S. Lamont, Secretary of War, party of the first part, and The Cleveland and Pittsburgh Railroad Company, party of the second part, that the terms of the contract of February 17th, 1877, and of the license of March 13th, 1893, shall be in all and every respect as though the harbor line had then been fixed as approved February 1, 1895, and The Cleveland and Pittsburgh Railroad Company is hereby granted permission to use and occupy said strip of land 45 feet in width extending from the Lake Shore and Michigan Southern Railway Company's bridge on the south to the said harbor line of the north and to maintain a uniform floor line on said pier for its entire length under the terms and conditions of said contract and license.

In Witness Whereof, The said party of the first part has subscribed this instrument with his hand and has set hereto the seal of the War Department and the party of the second part has subscribed the same by its president and secretary and has set thereto its corporate seal on this fifteenth day of May, 1895.

THE CLEVELAND AND PITTSBURGH
RAILROAD COMPANY,

By R. F. SMITH, *President*.

Attest:

G. A. INGERSOLL, *Secretary*.

DANIEL S. LAMONT, *Secretary of War*.

[Seal of C. & P. R. R. Co.]

[U. S. A. Seal.]

677 (Endorsed:) 2614. Supplementary Agreement with Cleveland & Pittsburg R. R. Co. for use of East Pier at Cleveland, Ohio, dated May 15th, 1895. Entered in Con. Book H. Pg. 119 Auditor's Office June 25, 1895.

And further to maintain the issues on their part, all the defendants thereupon offered in evidence agreement between the City of Cleveland and the three defendant Railroad Companies, recorded in Cuyahoga County Book of Leases, Vol. 2, page 59, relating to the occupation or use of certain portions of Bank street, which were made necessary in the construction of the Union Station.

To which the plaintiff objected.

Judge SANDERS: We offer that for the purpose of showing that the City co-operated, by its contract, in the location of the Union Station there, and that its insistence on its right to maintain the property here in dispute would render useless the Union Station. We offer that for the purpose of showing the co-operation of the City and the location of the Union Station there, having reference to the fact that it was specially so located as that the contention that the City now makes would impair that contract very seriously.

The objection was overruled by the court; to which ruling of the court plaintiff then and there excepted.

Said agreement is in the words and figures following, to-wit:

This Agreement made and entered into this 15th day of March, A. D. 1864, by and between the City Council of the City of Cleveland on behalf of said City by the Mayor thereof, acting under and in pursuance of the authority delegated to him in the premises by a resolution for that purpose passed by said City Council on the 8th day of March, 1864, of the first part, and the Cleveland, Columbus and Cincinnati, the Cleveland Painesville and Ashtabula, the Cleveland and Pittsburgh and the Cleveland & Toledo Railroad Companies of the second part, Witnesseth:

That the said party of the first part hath granted and doth hereby grant unto said Railroad Companies the right to enter upon and occupy respectively so much of Bank street in said City as lies between a line drawn across said street, parallel with the present track of said Cleveland, Painesville and Ashtabula R. R. Company across said street, which line at the center of the street shall be 474 feet north of the northerly line of Lake street, and Lake Erie, and to

build thereon a building to be known as the Union Passenger
678 Depot. And the said party of the first part hereby covenants and agrees that the rights hereby granted to said Companies shall be enjoyed by the same so long as they shall observe and keep the covenants hereinafter contained, to be performed by them.

And in consideration of the aforesaid grants and covenant, the said Railroad Companies hereby covenant and agree so soon as they enter upon said Bank street as aforesaid, to open and keep open and in a condition suitable for the public to travel upon it, a public street at least sixty feet wide extending from said Bank street to Water street, the northerly line of which shall be upon the southerly line of said Depot, and to keep the same open and in like good repair, so long as said depot shall be used as aforesaid, and if at any time hereafter the said Railroad Companies shall be dispossessed of the use of said portion of said Bank street, for the purposes aforesaid, or shall surrender the same to the said City Council, then and thereafter said street so opened by them shall be discontinued and be subject to the exclusive use and possession of said companies or their assigns.

In Witness thereof the said Mayor on behalf of said City, and in pursuance of the authority so conferred as above stated, has hereunto set his hand, and affixed the seal of said City of Cleveland.

And in behalf of said Railroad Companies L. M. Hubby, President of the Cleveland, Columbus and Cincinnati Railroad Company, Amasa Stone, Jr., President of the Cleveland, Painesville and Ash-
tabula Railroad Company, J. N. McCullough, President of the Cleve-
land and Pittsburgh Railroad Company and John Gardiner, Presi-
dent of the Cleveland and Toledo Railroad Company have hereunto
set their hands and affixed the seals of their respective Companies to
duplicates hereof.

[SEAL.]

(Signed)

I. W. MASTERS, *Mayor.*

[SEAL.]

L. M. HUBBY,

Pres. C., C. & C. R. R. Co.

[SEAL.]

A. STONE, JR.,

Pres. C., P. & A. R. R. Co.

[SEAL.]

J. N. McCULLOUGH,

Pres. C. & P. R. R. Co.

[SEAL.]

JOHN GARDINER,

Pres. C. & T. R. R. Co.

Recorded in Cuyahoga Co. Book of Leases, Vol. 2, page- 59 and 60.

(Endorsed:) Agreement for occupancy of part of Bank street City
of Cleveland and C. C. & C. R. R. Co.; C. P. & A. R. R. Co.; C. & P.
R. R. Co. and C. & T. R. R. Co. March 15th, 1864. Recorded May
21, 1868, Cuyahoga County Records, Vol. 2 of Leases pages 59
and 60.

679 And further to maintain the issue, on their part, all the
defendants offered in evidence the testimony of GEORGE H.
WARMINGTON, given on the trial of this cause in the U. S. Circuit
Court, as follows:

Q. What is your name?

A. George H. Warmington.

Q. How long have you lived in Cleveland?

A. Well, sir, I have lived here always; I was born here in Cleve-
land.

Q. And how early did you begin business here in Cleveland?

A. I commenced in 1851.

Q. And where; what part of the city?

A. My first business was on the river—on the Cuyahoga river

Q. What line of business have you been in for the most part,
during your business life?

A. In the coal business.

Q. Were you acquainted with Daniel P. Rhodes?

A. Yes, sir; I was in his employ—commenced with him.

Q. In 1851?

A. Yes, sir; Mr. Rhodes and David Todd was his partner—that
was the firm.

Q. Where was Mr. Rhodes at that time, carrying on the coal
business?

A. His main office was north of Front street, and he occupied a

building about—as I recollect; I haven't been over the ground for some time—but I should say that it was about five or six hundred feet north of Front street and I think that the building belonged to the government; he used it as his office.

Q. And what about this coal yards, if he had coal yards?

A. He occupied the front of Cuyahoga river—he had others—from north of Front street down to this building—his office building, and north of the building.

Q. How far did he come, if you remember, east of the river?

A. East of the river?

Q. Yes; up towards Water street—how far back did he use it?

A. That I would call south.

Q. Well, south, then?

A. There were other dealers engaged in the coal business that occupied buildings, as well as Mr. Rhodes, on this front.

Q. Are you able to tell us any more definitely what his location was, or how much he was using?

A. How much was used?

Q. Yes?

A. My recollection is that all of the room, from Front street, running north to the government piers, was used by men engaged in the coal business, at that time, 1851, 1852, 1853, and 1854, and even later on.

Q. Do you remember anything about whether Mr. Rhodes
680 was in business there prior to 1851?

A. He was in the coal business; yes, sir.

Q. I mean in that locality?

A. Yes, sir; I think he was, although I was not connected with him previous to 1851.

Cross-examination of GEORGE H. WARMINGTON.

By Mr. LAWRENCE:

Q. Was Mr. Rhodes located on what is known as the government pier?

A. Yes, sir; his office, as I understood it, was on the government pier; the other coal men had offices at different points along on the frontage.

Q. Did he receive coal from boats on the river?

A. Yes, sir; the first year coal was received by canal boats—the first year that I was in his employ.

Q. And what was his business—reloading that coal on steamers on the lake?

A. Yes, sir; it was unloaded on the dock and then sold to steamers for fuel.

Q. And the unloading and the loading was all upon the government pier?

A. No, sir; I don't think that the canal boat coal was unloaded on the government pier—not what I term the government pier; the government pier was raised six or seven feet higher than the dockage from Front street north, running four or five or six hundred feet,

and the canal boats could not be unloaded on what was then called the government pier; but it was unloaded on the frontage, on this low ground.

Q. South of the pier, was it?

A. South of what was called the government pier.

Q. And then the lake steamers would come in to the river, come right up along the pier and the coal would be loaded into them?

A. Loaded into them; yes, sir.

And further to maintain the issues on their part, all the defendants offered the testimony of REUBEN F. SMITH, given on the trial of this cause in the U. S. Circuit Court, as follows, to-wit:

By Judge SANDERS:

Q. What is your name?

A. Reuben F. Smith.

Q. How long have you lived in Cleveland?

A. Forty-eight years.

Q. When did you first become connected with the Cleveland & Pittsburgh Railroad Company?

A. In March, 1855.

Q. And has your connection with that company continued ever since?

A. It has.

681 Q. In what department did you first enter the service of the company?

A. I was first appointed as paymaster.

Q. And just state generally what positions you have occupied in the company?

A. I was paymaster for ten years; I was auditor for five years; I was vice president for three years, and following the lease I was assistant manager of the Cleveland & Pittsburg Road, and for the past seven years I have been president of the Cleveland & Pittsburgh Railroad Company.

Q. So that, have you, since 1855, as an officer of the Cleveland & Pittsburgh Company, been familiar with the Bath street tract, so called, which is in dispute in this action?

A. Yes, sir; I have.

Q. When you entered the employ of the company in 1855, tell the jury what you remember as to the occupancy of the company, at that time, of any portion of the premises in dispute here?

A. The company, at the time of my entering the service, occupied the Bath street property with a grain house and a shed, or freight house, adjoining that warehouse on the south, and with tracks leading into the ware house and shed, for the transaction of freight business. About that time there were completed two piers, belonging to the company; one was known as the west pier, or river, coal dock, which was adjoining the government pier, or, rather, adjoining a dock which was known as the Collins dock, which adjoined the government pier on the east. And then there was a pier on the west of Water street, which was about six hundred feet in length—

one hundred and fifty feet wide, perhaps—a coal pier, running out into the lake, where coal was handled; as was the case, also, with the west, or river, coal dock; the coal and the ore were handled all together on those piers, at that time.

Q. On the west side of the property?

Mr. BAKER: The Cuddy-Mullen dock is not the one next to the right of way; it is the Northern Steamship Company dock.

Mr. BOYLE: The Cuddy-Mullen is within the line of the Harback appropriation—both docks.

A. The coal was handled on this east pier, immediately west of Water street, and on the river coal dock, or the west pier, as it was called, adjoining the government east pier, on the east, and ore was handled across the dock immediately adjoining the grain warehouse to the north.

Q. That grain warehouse subsequently burned, did it?

A. The grain warehouse burned about 1878, I should say, and the freight shed with it.

682 Q. You have been describing the condition as it was in 1855, substantially. Subsequent to that various other tracks and structures and docks have been put on the property by the company, have they?

A. There were at that time, when those docks were put in use, there were three tracks on each of the docks, running out to their north extremity. I should have said that the Cleveland & Pittsburg Railroad also owned on that territory, and occupied on that territory, the one-fourth, in common, of what was known as the old Union Depot; it was to the west of Water street, and on the Bath street property so called.

Mr. BOYLE: There is a plat here showing the location of that whole passenger depot.

Mr. BAKER: Yes; there is a plat here showing that; it just shows the little old depot reservation. I am going to suggest, when you get through with the testimony of about four witnesses here, Mr. Ford, Mr. Scrivens and this witness, that you get one of your engineering people to come over here, if he knows it, and examine him, and let him supply on this map the data that are now unintelligible. (Referring to Plaintiff's Exhibit —.)

Q. What was the width of Bath street, when you went down there, if you remember?

A. I couldn't state certainly.

Q. These buildings and structures and docks that you have been speaking of, were all north of the northe-ly line of Bath street, were they?

A. They were; yes, sir.

Mr. LAWRENCE: Your Honor, I did not object at the time, but I do now object, because the question calls for a conclusion of the witness, not as to an incidental matter—I would not object if it was—but as to a matter that is directly involved in this case.

Judge SANDERS: Then I will say "what we call Bath street, not what the gentlemen call Bath street?"

The WITNESS: The street that was used and known as Bath street, and used as such, subsequently known as Bath street, and now known as Front street.

Mr. LAWRENCE: I move to strike out that statement, your Honor. The court overruled the objection and the motion to strike out; to which ruling of the court the plaintiff, by counsel, then and there excepted.

Q. What I was getting at was where were those structures and buildings with reference to the north line of Front street?
683 A. If the north line of Front street was one hundred feet from the south line—which I believe was the case at the time—they were well north of that, and equally north of the one hundred and thirty-two foot line, which is the present north line as defined—they were entirely north of any line that was ever defined as the north line of Bath street, or Front street.

Mr. LAWRENCE: I move to strike out that statement, that they were entirely north of any line, and so forth.

The WITNESS: I had reference to the definition as it has been since defined and known. There was no north line originally defined. I used the language with reference to that fact.

Mr. LAWRENCE: Now, your Honor, this witness is going on here and making statements without any questions being put to him; and he is undertaking to state what would not be proper, if questions were asked him. I move to strike that out.

The COURT: The motion to strike out that answer is overruled. (To which ruling of the court the plaintiff, by counsel, then and there excepted.)

Q. Now, from 1855 to the present time, state to the jury to what uses all the property in dispute here, north of the north line of Front street, has been devoted?

A. I don't know that I understood your question.

Q. To what uses or purposes has all of this property north of Front street been devoted, since 1855?

A. It has been devoted entirely to railroad purposes, in the handling of freight and passengers.

Q. It has been occupied by what companies besides your own—certain portions of it?

A. It has been occupied by what is now known as the Lake Shore & Michigan Southern, and the Cleveland, Columbus, Cincinnati & Indianapolis, now known—or Indianapolis & St. Louis—the Big Four, so called—the three companies.

Q. During all these years of your familiarity with the property, while it has been so used, as you have stated, what claim, if any, to your knowledge, up to about the time of the institution of this suit, was made by the City of Cleveland, to any ownership in that property, or right of control over it?

Mr. LAWRENCE: I object to that, your Honor, for the same rea-

sons as I stated before, when the question was asked the other witness.

(The court overruled the objection; to which ruling of the court the plaintiff, by counsel, then and there excepted.)

684 A. I have no knowledge that any claim was ever made by the city to any ownership there, previous to the time of this suit.

Q. Did you ever hear that the city claimed any rights?

A. They never claimed it, to my knowledge.

Q. Had they attempted any control over the property?

A. Never, excepting twenty-five feet reserved for a street along the front of the Government pier.

Q. Have you the means, from your personal recollection, refreshed by an examination of the books of the company, of telling us the cost to the company of some of the structures you have mentioned down there?

A. I could give the cost as shown by the books of most of the structures that have been erected there or were erected there previous to 1871, and the freight houses that are now standing there, which have been since erected; the original cost of them, from my own knowledge.

Q. Can you state what the cost of that grain warehouse was, down there?

(Objected to.)

Q. Such as you know of your own knowledge, Mr. Smith, you may state—such expenditures as you were personally conversant with, you may state?

A. The only expenditure that I have personal knowledge of, because it was done under my own direction, was that of the erection of the two freight houses; they are now standing, with the exception of the addition—the northern addition to the north freight house; there were two additions put upon that house. I could give the cost of the two freight houses that were built in 1870 and 1871, and I think the addition to it—to the north house—the first addition to the north house; the total cost was \$52,554.94. There was also the Collins dock, which I was instrumental in buying at sheriff's sale.

Q. Do you refer to the Collins dock?

A. The Collins dock which laid adjoining the Government pier on the east; it was built by D. K. Collins, the old American Steamship man, after he had come to this country; it was built by him, by squatters' right, I believe.

Q. The company bought that dock under your supervision?

A. It was sold at Sheriff's sale, and I bought it in—I purchased it.

Q. What did you pay for that?

A. \$1,730.

Q. Now, the other expenditures, for you to testify to them would be practically testifying as to what the books show, would it?

A. That is all I could testify to, what I found in the books.

685 And further to maintain the issues on their part, defendants The Cleveland & Pittsburgh Railroad Company and the Pennsylvania Company, offered in evidence Resolution found in Volume D of Council Proceedings, page 6, as follows, to wit:

"March 19, 1845. Mr. Mathews introduced a resolution directing the appointment of a committee of three by the chair, whose duty it should be to receive proposals for the renting of the unoccupied parts of Bath Street and report to next meeting of council. Adopted."

Also the following from Journal E, of Council Proceedings, page 368:

"November 26, 1850. Claim of Samuel Williamson, \$500.00, services in relation to Bath Street lawsuits, referred to Committee of Claims."

Also the following from Journal E of Council Proceedings, page 395:

"February 4, 1851. By Mr. Bingham: Resolved, that Samuel Williamson be allowed 5 shares of stock in C. C. & C. R. R. Co. full paid, for his services in relation to Bath Street lawsuits, in full to November 20, 1850, and that the mayor cause a transfer of same to him. Adopted."

Thereupon the defendants offered in evidence the testimony, taken on the trial of this cause in the U. S. Circuit Court, of FRANCIS FORD, a witness on behalf of the defendants, recalled for further cross examination, as follows:

By Mr. LAWRENCE:

Q. While you were on the stand before you spoke about the bulkhead that was put in by the Lake Shore Road on the north line of a portion of the property. Will you point out the part of that bulkhead that was put in by the Lake Shore and Michigan Southern—the pile bulkhead?

A. It is from this point out here, and down here (indicating on map, Exhibit No. 6).

Q. Designate it. Here is a track marked "B;" can't you start with relation to that track?

A. It is right here, where that track comes down and runs east to the easterly line of this bulkhead (indicating), and down—I forget now just the distance, down in that way (indicating)—we measured it—two or three hundred feet, and then out to that point (indicating).

Q. Where was it that the Lake Shore Railroad Company dumped the thousand cars of stone that you spoke of?

686 A. It was on the line of that bulkhead, just inside the piling to protect the piling.

Q. Which company owns the track marked "B" upon this map Exhibit No. 6, being the most easterly of the westerly group of tracks?

A. It is—the easterly track of them, I think, is a Lake Shore track; if it is not it is right along by the side of it; they are all

marked alike there; some of the maps have the Lake Shore designated by a different color.

Q. Will you tell us which company owns the track marked "C," being the second track easterly from the C. C. C. & St. L. round-house?

A. The C. C. C. & St. L. own it.

Q. And it being also the track that runs northerly to the east end of the bulkhead?

A. That track belongs to the C. C. C. & St. L.

Q. Between the track which is marked "B" and the track marked "C" are there any tracks or structures belonging to the Cleveland & Pittsburgh Railroad, or the Pennsylvania Company?

A. No, I think not—none whatever.

Q. And how far south will you go between those tracks, before you come to a track of the Pennsylvania Company, or the C. & P. Railroad Company?

A. Well, it would depend on the scale; the distance would depend on the scale; the tracks are those connecting these with the main track down here (indicating).

Q. Then the first track west of the track marked "B" is a Pennsylvania track?

A. Yes, the first track west of that.

Q. Now, following that track south, and curving to the east on to Water street?

A. Those are Pittsburgh tracks.

Q. Has the Cleveland & Pittsburgh Company, or the Pennsylvania Company, any tracks or structures north or east of that track and west of the track marked "C"?

A. None that I know of; I don't know of any—within those limits that you speak of; I don't know of any buildings that belong to the Cleveland & Pittsburgh Road.

Q. Have they any tracks within those limits?

A. You speak of within those limits east of this track (indicating)?

Q. East of the track "B."

A. And north of the track (indicating) up to this point (indicating)—this line through here—I think they have these tracks, they belong to them down here (indicating).

Q. That is outside of the limits, but I mean within the limit of the track marked "C"?

A. They have nothing that I recollect now.

Q. When was the C. C. C. & St. L. round-house built?

A. It was built in 1895.

687 Q. When was the L. S. & M. S. Railroad Company freight house built?

A. That was built in 1852 and 1853.

Q. And has been standing there ever since, has it?

A. Yes, sir.

Q. When was this coal shed erected (indicating)?

A. I don't know; I made no estimate of it and I did not try to learn when it was built.

Q. What are the two small structures lying next east of the track marked "C" and colored yellow?

A. That is a tool house and store-house for the workmen.

Q. To which company do those structures belong?

A. The C. C. C. & St. L.

Q. I will ask you—I will mark another track here "D," being the most westerly track of the Pennsylvania Company lying on the west of the Cuddy-Mullen slip so-called, and running to the harbor line. Has either the Pennsylvania Company or the Cleveland & Pittsburgh Railroad Company any track or structures between that track and the track marked "C"?

A. No, I think not.

Q. I understand you to say that you ceased to be chief engineer of the Lake Shore & Michigan Southern Railway Company in 1880?

A. Yes, sir, in 1880.

Q. And you were in the employ of the company from 1855 to 1880?

A. From 1853 to 1880.

Q. I will ask if during those years the Cleveland & Pittsburgh Railway Company, or the Pennsylvania Company, occupied any part of the territory between the track marked "B" and the track marked "D," and north of the track "B" as it curves and leads to the east and southeast, between 1853 and 1880?

A. None to my knowledge. Speaking of these buildings down here (indicating), this is the Cleveland & Pittsburgh building.

Q. What is that building?

A. It is an office and shop.

Q. We will mark it "E." It is shaded yellow. To whom does this coal shed belong marked in yellow?

A. So far as I know, it belongs to the Lake Shore. This white line represented down here (indicating) is the track of a sewer. The sewer runs through that space down through there, and that sewer has been recognized as a dividing line there, through all my recollection.

Q. The dividing line between what?

A. The C. C. C. & St. L. and Pittsburgh property there. It ran through under the passenger depot—the old passenger depot.

Q. You speak of a sewer. Is that a sewer that was constructed by the city?

688 A. It is an open sewer, on the surface. It is covered from—I can't tell exactly where that old passenger depot was located on this map. It is covered down as far as the north side of the old Lake Shore and Cleveland & Pittsburgh passenger depot—perhaps a little further.

Q. Was that originally constructed by the city, do you know?

A. Well, I don't know; part of it I think was, and another part the C. C. C. & St. L. built and extended it.

Mr. CLARKE: That sewer?

The WITNESS: Yes, sir.

Q. Is it a sewer used for draining the city?

A. I think it is; I do not know much about it, that is the amount of it. I had nothing to do with it.

By Mr. CLARKE:

Q. I understood you to say that this L. S. & M. S. pier freight station was built in 1853?

A. 1852 and 1853.

Q. Now, the tracks that lead up to that, and which come from down by the Union Passenger Station, and that vicinity, were built about the same time?

A. Yes, sir.

Q. And tracks have been maintained in the same position ever since?

A. Yes, sir.

Q. And this track that you marked "B" and called a Lake Shore track, that has been there time out of mind, too, hasn't it?

A. Ever since I recollect.

Q. And I understood you to say when you were on the stand before, that these Big Four tracks which run due north from a point due west of Spring Street, and spread out here (indicating)—that in the location of those tracks there had been tracks from the time that the old passenger station was built in 1853?

A. Yes, sir.

Q. From that time to this?

A. Yes, sir.

Q. And about these tracks, or among the tracks, or between the tracks that lead up to the old pier freight house, and those that led up to the old passenger station, between those there was piling for driveways?

A. Yes, sir.

Q. All put in by the railroads?

A. Yes, sir.

Q. And are there yet?

A. Yes, sir.

Q. And that was put in about the time the old passenger station was built?

A. Yes, sir, the passenger station was built on that dock.

Q. And the dock covered all that ground there?

A. Yes, sir.

The COURT: Did I understand you to say that there was one track of the Pennsylvania Company running into that territory that you have described as being the Lake Shore and Big Four territory there?

689 The WITNESS: They had no tracks within the limits that he pointed out.

The COURT: Didn't I understand you to say that the first track west of this (indicating) was a Pittsburgh track?

Mr. LAWRENCE: The first track west of "B" is a Pittsburgh track, but in my question I did not include that. I commenced with track "B," but not the track west of that.

Judge SANDERS: The track west of that is a Pittsburgh track?

Mr. LAWRENCE: Yes, sir.

And further to maintain the issues on their part, the defendants offered in evidence the testimony of W. H. SCRIVEN, a witness for the defendants, recalled, as follows:

By Judge SANDERS:

Q. You have already testified to your connection with the Company?

A. Yes, sir.

Q. You are superintendent?

A. Yes, sir.

Q. And that you are familiar with this property in dispute, and have been since 1888?

A. Since 1889.

Q. State whether the map which I exhibit to you was made under your supervision?

A. It was.

Q. And whether it correctly indicates the boundaries of the property in dispute, here, as they are covered by the series of deeds and conveyances under which the railroad companies are occupying the tract?

A. It does.

MR. LAWRENCE: Your Honor, I object to that portion of the question which calls for his opinion, as to whether the railroad companies are occupying the tract under these conveyances.

Judge SANDERS: Well, claiming to occupy, if you prefer. I will change the question in that way.

The WITNESS: Yes, sir.

Q. This map was made under your supervision, from these deeds, and other muniments of title?

A. Yes, sir.

MR. DYE: Will you have the record show that it is offered
690 by The Cleveland & Pittsburgh and Pennsylvania Companies, Judge Sanders?

Judge SANDERS: Yes. Now, this map is offered in evidence by The Cleveland & Pittsburgh and Pennsylvania Companies.

The said map, so offered, was admitted in evidence, and is hereto attached and marked "Defendants' Exhibit No. 54."

And further to maintain the issues on their part, the defendants offered in evidence the testimony of REUBEN F. SMITH, a witness for the defendants, recalled, as follows:

By Judge SANDERS:

Q. You stated that you had been connected with the Cleveland & Pittsburgh Company since 1855, and have been familiar with the property in dispute since that date?

A. Yes, sir, I have.

Q. During the greater part of the time since 1855 in whose possession have the deeds and conveyances evidencing the company's claims to this property—in whose possession have they been?

A. They have been in the possession of the secretary of the company, and the president.

Q. In other words, in your possession, a greater part of the time, as custodian?

A. Yes, sir, for considerable part of that time.

Q. And for the last thirty or forty years have you been familiar with those deeds and the property which they purport to convey to the company?

A. I have, yes, sir.

Q. I put in your hands a map which has been testified to by Mr. Scriven, as correctly representing the different tracts of land covered by the deed from Thomas Harbach and others to the Cleveland & Pittsburgh Railway Company, dated June 18th, 1851. I will inquire of you whether the Cleveland & Pittsburgh Company and its lessee, the Pennsylvania Company, have been in the occupancy of that property since 1855?

Mr. LAWRENCE: I object to the question; it calls for this witness's opinion of what would amount to occupancy; he ought to testify to facts.

The COURT: You can ask him what he knows about the possession and occupancy.

Q. What do you know about the possession and occupancy of the Cleveland & Pittsburgh Company and the Pennsylvania Company, since 1855, under the deed from Harbach, to which I called your attention?

691 A. I know that the company has been doing business there—the Cleveland & Pittsburgh Railroad Company—from the time that I went into the service until the property was leased; and thereafter the Pennsylvania has been in like occupancy and use, for freight and passenger purposes.

Q. And under the deed?

A. Under this deed.

Q. Claiming under the deed?

A. Claiming under the deed of Harbach.

Q. Now, I call your attention to the piece of property described on the map as being conveyed in the deed from Daniel Rhodes to the Cleveland & Pittsburgh Company—are you familiar with that property?

A. I am, sir.

Q. You have been familiar for a great many years with that deed, have you?

A. I have.

Q. State what you know about the occupancy of that property by the Cleveland & Pittsburgh Company, under that deed from Mr. Rhodes?

A. It was originally occupied by the grain warehouse and the freight shed adjoining it, about which I testified the other day, and following the destruction of that property by fire, by the present freight houses.

Q. And under what evidence of title did the company occupy?

A. I know no other but Mr. Rhodes' deed.

Q. Was that your understanding all those years?

A. It was.

Mr. LAWRENCE: I object to his understanding.

The COURT: That question is leading.

Q. What was your understanding about it, for all those years?

Mr. LAWRENCE: I object to that, your Honor; the understanding of this witness is not material. I object to the question on the ground that it calls for a conclusion of the witness, as to what would amount to occupancy; and also calls for his opinion as to what is included under the title from Rhodes.

The COURT: I think what Judge Sanders calls for is competent, but I think the form of the question is calling for the witness's opinion, rather than a fact.

Judge SANDERS: I will change that, if the court please. I will withdraw that question.

Q. You have already stated that the company, since 1855, has used and occupied that Rhodes property, have you?

A. Yes, sir, I have.

692 Q. Now, under what muniment or instrument of title did they occupy and use it?

Mr. LAWRENCE: I object to that question, your Honor, on the ground not only that it calls for the opinion of the witness, but on the ground that it is one of the issues in this case, and the witness's opinion ought not to be taken in a matter like that, which is not a collateral matter, but is one of the essential matters in the case.

Judge SANDERS: I propose to show that the particular, specific property mentioned in that deed, we occupied, and occupied under the deed, since 1851. I expect to further show by the witness, if it be proper evidence, that while the company bought in these titles, the facts will show that the City of Cleveland, by the conveyance of 1849, which is described on that map, recognized the rightfulness of the occupation, and in fact the City actually provided for it in that very contract.

(The court overruled the objection; to which ruling of the court the plaintiff, by counsel, then and there excepted.)

A. Under the deed of Daniel Rhodes.

Q. Now, did you also have in your possession, as an officer of the company, the contract between the city of Cleveland and the C. C. C. & L. Company, relating to the Bath Street tract?

A. A copy of it.

Q. And have been all these years familiar with those provisions?

A. I have.

Q. And that contract as indicated on that map, includes all of the property for which you had deeds from Harbach and Rhodes, did it?

A. You mean the contract between the city and the C. C. & C.?

Q. Yes.

A. Yes, sir that is my understanding.

Q. And your understanding was that that in no way interfered with your title from Rhodes and Harbach?

(To which question the plaintiff, by counsel, objected.)

Q. I will withdraw the question. Did you also have in your possession the deed from Mr. Camp that is referred to on that map?

A. I think at one time it was in my possession; I think that was the deed that was lost, subsequently.

Q. But it was part of the records of the company?

A. Yes, sir, it was part of the records of the company.

Q. And you are familiar with the property to which that refers, on the eastern side of this tract?

A. I am.

Q. That, if I remember the map correctly, is the property adjoining Water Street?

A. Adjoining Water Street on the west.

693 Q. And does your statement as to the occupancy of this property since 1855, by the railroad company, include that strip?

A. Yes, sir, it was occupied by what we call the east pier.

Q. For how long a time have you been familiar with the matter of the payment of taxes by the Cleveland & Pittsburgh and the Pennsylvania Company, in this county?

A. Since I became auditor of the company, which was about 1864 or 1865.

Q. State whether or not during all those years the company paid taxes upon this property?

(To which question the plaintiff objected; which objection was overruled by the court; to which ruling of the court the plaintiff then and there excepted.)

Mr. LAWRENCE: The plaintiff excepts, your Honor, for the reason that the tax duplicates of the county are the best evidence of what taxes have been assessed against the Cleveland & Pittsburgh Railroad Company, and the Pennsylvania Company, in this county; second, that is an attempt to prove an estoppel in this case, by proof of the payment of taxes upon the property; and that in law the payment of such taxes is not ground of an estoppel; third, that the testimony called for is the opinion of the witness as to particular property on which taxes were paid, and we have admitted in open court that the Railroad Companies have paid all the taxes assessed against them on the duplicate of this county.

A. The company did pay taxes on this property.

Q. You had to do with it, personally, for many years, did you not?

A. I did, sir, as auditor, and sat with the boards of auditors every year.

Q. That is, the boards of county auditors?

A. Yes, sir, the county auditors assessing the personality as well as the real estate.

Q. Do you remember how long that has been the system of taxation of railroad property?

A. I couldn't say; it has been ever since I have had anything to do with the payment of taxes—I think a little bit before that, that this law took effect.

Cross-examination of REUBEN F. SMITH.

By Mr. LAWRENCE:

Q. I understood you to say the other day that you were president of the C. & P. Company?

A. Yes, sir.

694 Q. Of what do your duties consist as such president?

A. It would be easier to tell what they are not, perhaps, than what they are.

Q. Please answer the question as I give it. I have asked you what they are?

A. General supervision of the property and its affairs.

Q. The Cleveland & Pittsburgh Railroad is not operating any railroad, is it?

A. Not since 1871, no, sir.

Q. They leased all this to the Pennsylvania Company?

A. To the Pennsylvania Company, yes, sir.

Q. Now, what has the president of the Cleveland & Pittsburgh Company to do in connection with the receipts of the rental paid by the Pennsylvania Company, and its distribution to the stockholders of the C. & P. Company?

A. He has the general custody and general charge of the interests of the stockholders.

Q. What are your duties aside from receiving the annual rental and distributing it among the stockholders?

A. To sign bonds that may be issued, to sign certificates of stock that may be issued, to supervise the books and accounts of the Company, and prepare the annual report.

Q. Have you stated all?

A. I could not just this moment tell—there are a great many details—

Q. The accounts of the company only involve the receipt of the rentals for the property, and the distribution of it?

A. Yes, it includes keeping account of all new property added.

Q. The Cleveland & Pittsburgh is not adding any new property, is it?

A. Yes, sir, through its lessee; the lessee renders an account every year.

Q. You are not president of the Pennsylvania Company?

A. No, sir.

Q. Then your duties as president of the C. & P. Company do not bring you in connection with the operation of the road, do they?

A. It does not bring me in connection with the immediate operation of the property, no, sir.

Q. No building of new structures, or the putting down of new tracks, or the operation of any property?

A. No, sir, excepting to pay for them when they are done.

Q. Have you stated all your duties as president?

A. I think all the more important ones. I might think of a good many details if I had time.

Q. The fact is it is a mere honorary office, without any duties and functions; isn't that true?

A. No, sir, I wouldn't say that; no, sir.

Q. Have you any other connection with the Pennsylvania Company, at this time?

A. Yes sir, I have.

695 Q. What is your connection with it?

A. I am superintendent of the relief department.

Q. That is a voluntary organization of the employés of the company, isn't it?

A. It is a department of the company, organized to receive and disburse the voluntary contributions of such employés as choose to make such contributions.

Q. That does not bring you in connection with the operation of the railroad?

A. Not with the carrying of freight and passengers.

Q. Is that all you have got to do?

A. With the lessee company?

Q. Yes.

A. Yes, sir, I believe that is all.

Q. And is that all that you have got to do with the Cleveland & Pittsburgh Railroad Company, what you have stated?

A. What I have stated, substantially, yes.

Q. What is you- age?

A. Sixty-nine my next birthday.

Q. How old were you when you came with this company in 1855?

A. When I came with this company I was twenty-five years of age.

Q. And what was your position when you first came there?

A. Paymaster.

Q. And you remained as paymaster for ten years?

A. Yes, sir.

Q. What were your duties as paymaster?

A. They were quite numerous. I performed the duties that a paymaster ordinarily would; paid off the pay rolls and the bills of the company; but I also performed a good many of the duties of the auditor, as we had no auditor at that time.

Q. But you had nothing to do with the operation of the railroad at that time, had you?

A. Not during the time I was paymaster.

Q. After you ceased to be paymaster and became auditor, did you then have anything to do with the operation of the railroad?

A. Yes, I had to keep the accounts.

Q. You kept those in your office?

A. I kept those in my office, as they were reported up by the agents.

Q. You were not connected with what would be called the operating department of this road, were you?

A. No, sir, but I was connected with the accounting department.

Q. And your knowledge of the business of this company, and the immediate knowledge of the property it was occupying is derived from the records in the office of the auditor?

A. Not altogether, no, sir.

Q. What other source had you, of information?

A. Well, I had various other means of knowing what was going on—my own observation of what was going on under my eyes.

Q. You had the same means of observation that anybody else had, to see with your eyes?

A. Yes, sir, only I think I had a great deal closer observation than the ordinary observer would have.

Q. But your duties did not call for any acts upon your part, in connection with the construction of tracks or buildings, or improvements, or in the operation of the railroad?

A. Not immediately, at that time, no, sir.

Q. At what time did your duties bring you in connection with that part of the railroad?

A. About 1866, if I remember right—1865 or 1866; I haven't my memorandum with me; I could tell if I had.

Q. What office did you occupy then?

A. Vice president.

Q. And how long were you vice president?

A. For, I think it was six years.

Q. Who was president at that time?

A. J. M. McCullough.

Q. Now, you have stated that the Cleveland & Pittsburgh Railroad Company was occupying all the property covered in the Harbach deed. Please tell me what property was covered in the Harbach deed?

A. In the Harbach deed?

Q. Yes.

A. The property lying between the west line of Water street and the west face of the east Government pier, and I don't remember the base line, but I think it was either a hundred or something over a hundred feet north of the south line of Bath Street, or now known as Front Street, and indefinitely into Lake Erie, to the state line, I believe.

Q. Do you mean to say that the Cleveland & Pittsburgh Company was occupying up to the line a hundred feet from the south line of Bath street?

A. No, sir, I didn't say that they occupied up to the hundred feet.

Q. Well, what part of it did they occupy in 1855?

Judge SANDERS: You asked him what he understood the Harbach deed covered, and he has told you accurately.

Q. What part of the land, in 1855, was occupied by the Cleveland & Pittsburgh Railroad Company?

A. In 1855?

Q. Yes?

A. The territory conveyed by the Rhodes deed and the territory conveyed by the Camp deed, on which the piers and warehouses and tracks were located.

Q. Suppose you point out on this map, plaintiff's Exhibit No. 6, what they were occupying in 1855?

697 A. I don't know whether that map would show us the tracks, as they laid at that time. We were occupying from the west line here (indicating) of Water street to the east line of the pier, as I said before. Our main track, which led down to the grain warehouse, stood on the ground now occupied by these buildings (indicated), and I would say the grain warehouse occupied the ground where these buildings now occupy; we were occupying the land that was occupied or covered by the main track, which laid somewhere, down where my hand is, and led out into what was at that time a freight shed, adjoining the warehouse.

Q. The track was all on land, wasn't it?

A. That track wasn't all on land; I think the curve running out to the freight house here, ran over shallow water.

Q. And was that the most southerly track of the Pittsburgh road at that time?

A. At that time I think it was.

Q. And was this the most southerly structure—I mean the Pennsylvania Company freight house?

A. Yes, it was at that time; it didn't extend quite so far south, I should say, as the south line of the present south house.

Q. What tracks did they have north of that?

A. North of that there was three tracks, if I remember right—there were three tracks on this dock (indicating) and there were three, if I remember right, on the east pier—this east pier—running out to the end of the pier in each case.

Q. Do you know how far the pier extended at that time?

A. About four hundred feet from the north line of what was known as the old bulkhead. I don't know where it would be located, exactly, on this map; but about there (indicating).

Q. Can't you state something that would get into the record in a little better form than that? About how far out from the south line of Bath street?

A. Well, it would be six or seven hundred feet.

Q. And at the east, how far was it, from the south line of Bath street?

A. It would be seven or eight hundred feet, also—about the same distance.

Q. Were there any other tracks there than what you have mentioned?

A. There were tracks entering into the old Union Passenger Station up here (indicating).

Q. Designate that with reference to Spring street?

A. It laid between Spring street and Water street, and I think the west line of the north and south "L"—the old passenger was an "L" shaped building, running east and west and north and south—I think the east line of that depot was not far from Spring street.

Q. And how far out were those tracks from the south 698 line of Bath street?

A. Between two and three hundred feet.

Q. Now, have you told all the tracks that your company had in 1855?

A. So far as I can recollect.

Q. What other structures did they have then, than those you have mentioned?

A. I don't know that they had any others than those I have mentioned.

Q. Then when you say the Cleveland & Pittsburgh Railroad Company, in 1855, was occupying all the territory included in the Harbach deed and the Rhodes deed and the Camp deed, you mean they were occupying it in the manner you have just stated to me?

A. Yes, sir, by having certain structures on it.

Q. The structures that they had on it are those that you have mentioned to me?

A. Yes, sir.

Q. And you cannot now recall any other structures that they had on it?

A. No, sir, not just at this moment, I cannot.

Q. Do you know where the track of the Lake Shore Railroad Company is that is marked on this map as "B" (indicating)?

A. I don't think the Lake Shore has any track in that locality.

Q. Don't you know that track marked "B" on this map is a Lake Shore track?

A. It has been recently put there, then, if it is—since my knowledge of the situation.

Q. How recently have you been down there?

A. Oh, several years; it wasn't there at my last knowledge.

Q. How long has it been since you have had any special knowledge of this property?

A. It has been four or five years since I have been on that property, to notice definitely what was there.

Q. I will call your attention to this track that is marked "B" on this map, and another track marked "C" on this map, and I will ask you if the Cleveland & Pittsburgh Railroad Company, or the Pennsylvania Company have occupied any of the land or water, included between those two tracks?

A. I can't say, because I don't know about those tracks—I don't know where they lay.

Q. I am calling your attention to the tracks as shown on the map?

A. Yes, sir, I think we have. I cannot say positively.

Q. What have you?

A. There has been some tracks built in between the Lake Shore

freight house, over the water and the pier, which we were using there then (indicating).

Q. When were those tracks there?

A. They were there ten years ago, or fifteen.

699 Q. What has become of them?

A. I can't tell you. I suppose they are there now. I have no reason to the contrary.

Q. Don't you know all those tracks are laying west of the track marked "B", and are there yet, except that they have been extended further out to the north?

A. I don't know about that track which you say is marked "B."

Q. Then, when you have stated that the Cleveland & Pittsburgh Road and the Pennsylvania Company have been in the occupation of this territory, you have answered without knowledge of where the tracks were, or when they were constructed, to a large extent?

A. No, sir, I didn't say that. The pier was subsequently extended fifty feet and the tracks out to the end of them; there was that much more occupation than I have testified to before—under my direction and knowledge both the east and west pier.

And further to maintain the issues on their part, the defendants offered in evidence the testimony of EDWIN C. FORBES, a witness for the defendants, recalled, as follows, to wit:

By Mr. BROOKS:

Q. You may state what book you have in your hands?

A. I have the district assessor's return of lands and buildings, in the City of Cleveland, first, second and third wards, of Cuyahoga County, Ohio, for 1870.

Q. Is that a book which is under the control of the county auditor, and in his office?

A. It is.

Q. You may state whether there is any entry in that book with reference to the Bath Street property—the property in controversy.

A. There is.

Q. You may state what that entry is?

A. On page 28 it appears under the Cleveland & Pittsburgh Railroad Company, a piece of land described as all east of stone pier to Water street, produced north, commencing at a line blank feet north of Front street, valued at twenty thousand dollars, for the land, buildings forty thousand dollars; total value of lands and buildings is returned by the district assessor, sixty thousand dollars.

Q. Is there any entry there with reference to the Big Four, relative to part of this property?

A. There appears a piece of land listed under the Cleveland, Columbus and Cincinnati Railroad Company, described as all
700 north of Front street, sub-lots one to thirty-one inclusive, valuation one hundred thousand dollars for the land, and under the column for total value of lands and buildings as returned by the assessor, the same amount.

Q. That is the decennial appraisal of 1870?

A. Yes, sir.

Cross-examination of EDWIN C. FORBES.

By Mr. LAWRENCE:

Q. Are those the returns of the district assessor that you have been giving us?

A. Yes, sir.

Q. Are those pieces of property taxed or listed for taxation upon the tax duplicate?

A. No, sir, they are assessed to the railroads as exempt property.

Q. Not taxed, then?

A. There are no direct taxes on the valuation. The values are omitted from the duplicate.

Q. And that is true of all the years, for the ten years succeeding that decennial valuation?

A. Yes, sir.

The COURT: What do you mean by exempt from taxation? Do you mean they pay the tax in another form?

The WITNESS: The property is listed as property used in the daily operation of the road.

Q. And whatever taxes are paid, or whatever are charged against them are based upon the returns, such as we had here the other day?

A. I suppose so.

Q. Are you familiar with the method of taxing railroad companies?

A. No, sir.

Q. But do you know that they are not taxed upon those valuations upon the tax duplicate?

A. Yes, sir.

By Judge SANDERS:

Q. All you mean by that is that that is not carried onto the tax duplicate—isn't that what you mean?

A. Yes, sir, this valuation is not carried onto the duplicate.

Q. But it goes down with the other returns, to the board of auditors, who tax railroad property?

A. All I know about the taxing railroad property is that the county auditors fix a value upon the property, under different schedules, and those items go into that calculation. The county auditor could testify to that.

Q. The returns and assessments that go before the county
701 auditors are the returns made by the railroad companies themselves?

A. That is the way I understand it.

The COURT: What do you do with those assessments that you don't carry on the tax duplicate?

The WITNESS: I don't know that we do anything with them; they are simply a matter of record in the office to be used in case a

transfer of this property to other parties is made, in order to restore them to the duplicate.

Q. There is a difference in the way that this property is returned by the district assessors, and treated upon the duplicate, than in the case of public property belonging to the City of Cleveland, that is not subject to taxation, or to church property that is not subject to taxation, is there?

A. Not to my knowledge.

Q. Now, you understand that church property, under the Ohio law, is exempt from taxation?

A. Yes, sir.

Q. But the district assessors make return of it every ten years, don't they?

A. Yes, sir.

Q. And when it is entered upon the duplicate it is not put on for the valuation fixed upon it?

A. The valuation is dropped.

Q. And in the case of public property owned by—when the City of Cleveland or the County of Cuyahoga has title to public property, which is not subject to taxation, that is returned by the district assessors, and entered upon the duplicate, in the same way, isn't it?

A. It is.

And further to maintain the issues on their part defendants The Cleveland & Pittsburgh Railroad Company and the Pennsylvania Company offered in evidence Lease dated April 8, 1845, from Charles Whittlesey as the agent of the heirs of Thomas Lloyd, to David Camp.

(To which the plaintiff objected, first, for the reason that it is a private agreement between the parties to it, and cannot bind the City of Cleveland. Second, for the reason that the terms specified therein had expired before any rights claimed to have been acquired by the Cleveland and Pittsburgh Railroad Company in this property. Third, it is a mere possession; does not tend to show that Whittlesey, as the agent of Lloyd or Lloyd was in possession of the property.)

Plaintiff does not insist upon any proof of signature.

(The objection was overruled by the court; to which ruling of the court the plaintiff then and there excepted.)

Said agreement is as follows, to-wit:

This Memorandum of Lease made by and between Chas. Whittlesey as the agent & attorney of the heirs at law of Thomas Lloyd & of Ellery G. Williams Commissioner of Insolvents for Cuyahoga County, Ohio on the one part & on the other of David Camp of Cleveland witnesseth as follows:

The said Camp is hereby authorized to enter upon, enclose, use & occupy the premises described below for the term of two years from the first of April, 1846.

The land hereby leased is situated & bounded as follows: Be-

ginning on a line run & established by Abaz Merchant as the north line of Bath Street by his return of a survey made for the City of Cleveland February 4th, 1845—at a point 100 feet easterly of the east side of Meadow Street as continued to the Lake—Thence from said point as a beginning N. 24° W. & perpendicular to said line of Bath Street to Lake Erie. Thence easterly along the shore of said Lake to the west line of Water Street continued northerly to the Lake. Thence southerly along the line of Water Street to the northerly line of Bath Street aforesaid—thence westerly said north line to the place of departure.

Also lots numbered 23, 24 & 25 of said Merchant's said survey and allotment. The said Camp agrees to pay for the use of said land the sum of fifty dollars per annum payable at the end of every half year deducting such sums as may be expended in making enclosures & permanent improvements.

The heirs aforesaid are Wm. B. Lloyd, Caroline Lloyd, Rosetta Lloyd, Delia Ann Lloyd, Abigail Lloyd, John Henry Lloyd, & James E., Mary, Carolina, Rosetta, Delia Ann, Margaret, Sarah & Thomas L. Hayden.

Signed duplicates Cleveland April 8, 1845.

CHARLES WHITTLESEY,
Agent for said Williams and said Heirs.
DAVID CAMP.

(Endorsed:) David Camp Lease Bath Street Lands.

Judge SAUNDERS: I desire now to offer on behalf of the Cleveland & Pittsburgh and Pennsylvania Company, the answer of Hezekiah Camp in the Price and Crawford case, found in Supreme Court Record, Volume M, at page 276, submitting the question whether in the light of the present state of the proof it is not competent for us to offer that answer, not for the purpose of proving the facts as alleged by Camp and Lloyd, but for the purpose of showing the claim of title which they were making, and the circumstances in which the contract of 1849 was made, and the circumstances in which we purchased the title in 1851 and 1852.

703 (To which the plaintiff objected; which objection was sustained by the court; to which ruling of the court the defendants then and there excepted.)

Said answer, so offered and excluded is set out by way of offer to way of offer to prove, as follows:

And also on the 29th day of January, A. D. 1851, was duly filed in the Clerk's office of said Court of Common Pleas the separate answer of Hezekiah Camp, to-wit:

THE STATE OF OHIO,
Cuyahoga County, ss:

In the Court of Common Pleas, Vacation after October Term, 1850.

In Chancery.

WILLIAM B. LLOYD, THE CITY OF CLEVELAND, and Others
vs.
LEMUEL CRAWFORD and WILLIAM PRICE.

*The Separate Answer of Hezekiah Camp, One of the Defendants,
to the Bill of Complaint of the Above-named Crawford and Price,
Complainants.*

This respondent, for answer to said bill or to so much thereof as he is advised is material for him to make answer unto, answering, admits the execution and delivery of the lease of Bath Street lots Nos. seven and eight from the City of Cleveland as set forth in said Bill; also from information and belief he admits the assignment to the complainants of said lease from said city to said Mathivet, also he admits that said Davis or some other person made improvements on said lot No. 6 to the amount of from six to seven hundred dollars as near as he can judge, but does not know the value of the same, and prays that the complainants may prove the same as they may be advised.

Respondent further answering says that he is advised and believes that complainants have made improvements to a considerable amount on said lots, but to what amount he is not informed, nor does he know, but prays the complainants may be required to prove the same as they may be advised. Nor has this respondent any personal knowledge of the payment of the rents by the complainants on said lots and cannot admit or deny the same, and leaves the complainants to make such proof thereof as they may be able to do.

Respondent further answering says, that he has no personal knowledge of the amount of damages the complainants may suffer by being dispossessed of said premises nor can he admit or deny the allegations in the Bill in that behalf, but leaves the complainants to their proofs; but this respondent admits that the use of
704 said premises is of great value and much beyond the amount of the injunction bail exacted of the complainants in this cause.

Respondent further answering denies, that the City of Cleveland had, or ever had, a clear legal title to the said premises or any part thereof, or that said city had or ever had *had* any title, either in law or in equity, to said premises or any part thereof, beyond a mere naked and wrongful possession of said premises, which by its officers and agents it unjustly withheld from this respondent and his co-owner, William B. Lloyd. Respondent further answering denies that said lots ever were embraced in said Bath Street in said City.

but on the contrary said Bath Street had, — at *any* time said lots were surveyed laid out, and was recorded and made one of the streets of said City without including said Lots as the complainants well know. Respondent also denies that said City of Cleveland had any right whatever, to lease any portion of the premises referred to in the said Bill as portions of said Bath Street, nor had said city any legal right whatever in said Lots Nos. Six & Seven & Eight, so occupied by the said complainants under said leases, but that the legal and equitable title to the same were vested in this respondent and the said William B. Lloyd, the legal title to the whole of said premises being vested in the said William B. Lloyd who owned 54-100 of the equitable title thereto and the remaining 46-100 of the equitable title to the same being vested in this respondent.

Respondent further answering says that he is informed and believes, that said Jabez W. Fitch was appointed by the said city of Cleveland to collect rents on the said leases in said Bath Street at or about the time alleged in said bill, but this respondent does not know nor has he information or belief as to the exact time during which the said Fitch continued to act as the agent of said City for that purpose and leaves the Complainants to prove the same as they may be advised.

This respondent further answering says, that he has no information, knowledge or belief except from the statements contained in said bill and cannot admit or deny the same as to any waiver by the said Jabez W. Fitch — the time and as to place of paying the said rents. But this respondent denies, that the said Fitch had any authority in the premises to waive the right of said City to have payment of the said rents from said complainants as provided for in the said leases and respondent avers that such waiver was wholly void and did not discharge the complainants from the forfeiture of the said leases for nonpayment of the said rent as he is advised and believes and the respondent is informed and believes that
705 the time for which said Fitch was appointed had before that time expired and that he was not then the agent of said city.

Respondent further answering says that he is informed and believes that at the time — the contract between the said Cleveland, Columbus & Cincinnati Railroad Company and the said City of Cleveland in or about the month of September, 1849, and for a long time prior thereto the said complainants had neglected to pay the rents reserved to the said City of Cleveland by the terms and conditions of their respective leases of said lots, whereby the said leases had become forfeited and utterly void, the said City of Cleveland having good right to dispose of any interest it claimed to have in said lots as though the said several leases had never been executed.

Respondent further answering says that he has no personal knowledge of the appointment by said City of Cleveland of the said Mathew J. Williamson in February A. D. 1850 as agent of the said City to collect said rents as set forth in said Bill nor can this Respondent admit or deny the same but this respondent does not believe, that the said Fitch and the said Williamson were both employed, as seems to be charged in said Bill, to collect said rent from

February A. D. 1850 to April 1st, 1850 and this respondent leaves the complainants to prove the same as they may be able.

Respondent further answering says that he is informed and believes that the said Complainants neglected to pay the rents reserved in their said several leases, as the same fell due and thereby having forfeited the same, were afterwards desirous of paying said rents, and respondent is informed and believes that they did call on said City Attorney and offer to pay the same but that neither the said City nor the said Railroad Company would receive the same, they choosing rather to avail themselves of the forfeiture of said leases for the non-payment of said rent, than to receive the same from the said complainants.

This respondent further answering says, that he has no personal knowledge of the fact, whether the said Railroad Company prior to the 1st of April 1850 passed a resolution not to receive any more rents of said complainants and other holder- of said leases on said Bath Street, nor can this respondent admit or deny the same, but leaves the complainants to prove the same as they may be advised.

Respondent further answering admits that he and the said William B. Lloyd, whom this respondent is informed and believes at the time of filing said bill resided in the city and state of New York, did claim title to the premises described in said bill as "Bath Street" and not only pretended to have some claim, but were actually vested with the legal and equitable title thereto in the manner and proportions above stated, but whether the complainants believed said "pretended claim" of this respondent and the said Camp to have been fictitious, this respondent has no knowledge information and belief excepting what is derived from the said Bill, and prays that said complainants may be required to prove their said "belief" if the same be material to this respondent's rights.

Respondent admits the commencement of nine suits in ejectment for the recovery of said leased premises now occupied by the complainants and other portions of said premises known as "Bath Street," the said suits having been commenced at the time and in the manner stated in said bill. Respondent also admits that said City of Cleveland was made defendant in said suits at its own request, and with consent of the tenants in possession when said suits were commenced. Respondent further admits that the attempt of said city to defend the said suits was made in good faith towards the tenants in possession, and was done with the determination to defend the rights of said City and the said tenants to the last extremity of the law.

Respondent further answering says that the title to all the said Bath Street Lots including those occupied by the complainants under said leases from said City, depended substantially upon the same facts and the same legal principles as this Respondent is advised and believes, and that therefore in order to diminish the expense of litigating the title to said Bath Street property, it was mutually and in good faith agreed between the counsel for this respondent and said Camp and the Counsel for said City, with the assent of said City and said Camp and this respondent, that one of said suits only should

be tried, and that the others should be continued until a final judgment could be had in such litigated suit, which arrangement was complied with by both parties and one of said suits viz: the one commenced originally for the recovery of the portion of said property known as the Bath Street property, which was then described as follows, to-wit: Being so much of said tract as is twenty-five feet in width and running back to Commercial Street and lying north to the northerly alley and adjoining said alley and fronting on

707 what is called the Harbor pass except so much as was occupied by the Government House, was accordingly tried and a verdict and judgment in the Court of Common Pleas rendered for the plaintiff in said ejectment suits on the legal title of this respondent to the said premises.

Respondent admits that exceptions were taken to the ruling of the Court of Common Pleas, on the trial of said suit, and a writ of error brought in behalf of said City and prosecuted in the Supreme Court, to reverse said judgment of the Court of Common Pleas which suit in error was reserved to the Court in Bank for decision where the same was pending, when the said disputed title to the whole of said Bath Street property was settled as hereinafter stated, but this respondent denies that said suit was pending in said Court in Bank when said Bill was filed, but on the contrary your orator is informed and believes and so alleges the fact to be, that said suit in the Court in Bank was settled, with the right for the plaintiffs to take judgment, when they see fit, long before the filing of said bill.

Respondent further answering says that up to the time of the contract between the said Lloyd, this respondent and the said Railroad Company hereinafter mentioned he and the said Lloyd were the sole owners and the said Lloyd and his co-heirs the sole plaintiffs in said suits. Respondent also admits the incorporation of the Cleveland, Columbus & Cincinnati Railroad Company as set forth in said bill.

This respondent further answering denies, that he and the said Lloyd, the said Cleveland, Columbus & Cincinnati Railroad Company and the said City of Cleveland entered into a combination for the purpose of defrauding the said complainants in the premises or of depriving them of said leased premises or any improvements by them made therein as is falsely charged in said Bill, nor was there to the knowledge information or belief of this respondent any such fraudulent combination between the said Lloyd the Railroad Company or any or either of them.

Respondent further answering says that neither he nor the said Lloyd ever recognized any right or interest in the said lots to be vested in said complainants or either of them, but on the contrary considered them as intruders on the premises and rights of respondent and said Lloyd during the pendency of said suits and endeavored to treat them as such so far as to press the said suits to a trial as speedily as the obstinate defense of said City would admit.

Respondent further answering admits that the said suit in the Court in Bank was settled between the City of Cleveland and this respondent and the said Lloyd and that the reasons which induced this

respondent to consent to such settlement, were as follows, viz: That said City having been pressed by the result of the said trial in the Court of Common Pleas, and fearing that the said judgment would be confirmed by the court in bank and the title of this respondent and said Lloyd to said property settled and endeavoring to maintain its pretended interest in said Bath Street property to the last, and desiring to embarrass this respondent and said Lloyd by every possible and honest device, in order to bring them to a compromise of said suits and title and finding the said Railroad Company anxious to appropriate said Bath Street property to its own use under its charter encouraged the officers and agents of said company to threaten to appropriate said property to its own use and to leave this respondent and said Lloyd to take what appraisers under said charter might award as their damages for said land.

Respondent further answering says that said Railroad Company determined to take said Bath Street property, and actually gave this respondent and said Lloyd written notice of their intention so to do, and that the said City of Cleveland assented thereto, as respondent is informed and believes said City intended to settle with said Railroad Company on the best terms they could, after getting rid of respondent and said Lloyd by means of said Railroad Company. Respondent further states, that the said suit in the Court in Bank not having been decided and in view of the real or supposed combination between the said City and the said Railroad Company to make common cause against the respondent and the said Lloyd in said suits and in view of a protracted litigation with those wealthy and powerful corporations, this respondent and the said Lloyd came to the determination to compromise their said right to said Bath Street property and afterwards did so compromise by assigning their right title and interest therein to said Railroad Company on the terms reservations and conditions contained in their agreement with said Company,

made on the 8th day of August, 1849, a copy of which said
709 agreement is hereto attached, marked "A" and made part of this respondent's answer to said Bill of Complaint and to which for greater certainty he prays leave to refer. And this respondent denies absolutely that in making said agreement, it was his intention, or as he — informed and believes the intention of the said William B. Lloyd, to cheat or defraud the said complainants or either of them, and he also denies, that they or either of them had any interest in said premises or any part thereof in respect to which they could be defrauded by respondent.

Respondent further answering admits that said agreement was made with the knowledge on his part and as he is informed and believes, on the part of the agent of the said William B. Lloyd, who executed said contract for him; that said City of Cleveland had effected or was about to effect an arrangement with the said Railroad Company to take such interest in said premises as this respondent and the said William B. Lloyd were willing to surrender to said City of Cleveland as a settlement of said disputed title to said Bath Street property.

Respondent further answering denies all combination confederacy

or connivance with said Railroad Company and said City of Cleveland to cheat or defraud said complainants or either of them as is falsely stated in said Bill, and respondent says, that in the commencement prosecution and settlement of said suits and each of them he and the said Lloyd acted adversely to the said City of Cleveland and all claiming under them, as well the said complainants and each of them as all others, as he and the said Lloyd had the right and it was their duty to do, and that in making said settlement, they intended to exact as much from and concede as little to the said City and those claiming under and aiding and abetting said City against the rights and interests of said Lloyd and this respondent, as they could and as they had a legal and equitable right to do.

Respondent further answering says that he is informed and believes, and so charges the fact to be, that the said complainants and each of them, long before and at the time they took said leases from said City and received the assignment of said lease from said Mathivet, knew of the claim of the said Lloyd and this respondent in all and every part of the said Bath Street property, and that said complainants took said leases and entered into possession of the

710 said Lots Nos. 6, 7 & 8 while the suits in ejectment were pending in behalf of said Lloyd and others for himself and this respondent to recover the possession of said lots and that said complainants had actual as well as constructive notice, that said Lloyd and this respondent were the rightful, legal and equitable owners of said lots and that they and each of them took said leases and possession of said lots under them, as well to aid said City in withholding the rightful possession thereof from this respondent and said Lloyd, as to make profit thereof for their own use.

Respondent further answering says, that he is informed and believes that said City in view of the pendency of said suits leased the said lots to said complainants and others at a rent almost nominal in comparison with its real value and refused to guarantee the title thereto, but required said complainants and others to take the same at their own risk, and respondent further says that the said leases were given at a rent of not more than one-fourth their real value and that neither said city exacted nor did said complainants agree to give such rent as they would have done, had they not doubted the title of said city to said lands.

Respondent further answering admits that a portion of said Bath Street property secured by said city for itself in said settlement, includes part of the premises so occupied by complainants, as in said Bill set forth.

Respondent further answering says that he is ignorant of the payment of rent by said complainants to said Railroad Company as set forth in said bill and he is ignorant of the fact whether or not said Railroad Company since the date of said agreement with said City, has received rent of said complainants and leaves said complainants to prove the same as they may, should they deem it for their interest so to do. Respondent denies according to his advice information and belief that said Railroad Company is or was the landlord of said complainants, but on the contrary he is informed and believes and so

alleges the fact to be that said leases were forfeited for nonpayment of rent by complainants to said City or to the said Railroad Company.

This respondent further answering says that he has not in his position the contract between said Railroad Company and said City of Cleveland and cannot therefore say, whether the provisions thereof as set forth in said bill are correct or not. But he says that he
711 is advised and believes that said City had the right, if such were the best terms they could obtain, to make such settlement of their disputed claim to said Bath Street property as is set forth in said bill and respondent alleges, that no more favorable terms for said city or for its tenants, who were permitted to enter said premises under said city, pending said litigation, could have been obtained from this respondent or from said Lloyd, as he is informed and believes.

Respondent further answering admits that prior to the agreement between said Railroad Company and said City the said Railroad Company had made the agreement with this respondent and said Lloyd hereinafter stated and set forth. Respondent also admits that judgments were taken in said suits in ejectment in favor of said plaintiffs for the use of the said Railroad Company and this respondent and said Lloyd; and in order to enable said Company and this respondent and said Lloyd to get possession of their respective portions of said Bath Street property according to the terms of said agreements with said Railroad Company and with this respondent and said Lloyd. And this respondent further says, that without such power over said judgments in the said Railroad Company and this respondent and the said Lloyd or in some one who could exercise such power without control, no settlement of said suits could have been effected as neither this respondent nor the said Lloyd would have assented to any arrangement without retaining the power to take possession of said property by virtue of said judgments above obtained.

Respondent denies that said judgments were taken by default but on the contrary the same were rendered in pursuance of and as part of the settlement of said Bath Street controversy between this respondent and said Lloyd and the said City and Railroad Company and without the rendition of and the right to enforce said judgments neither this respondent nor the said Lloyd would have consented to said settlement nor can the same now be carried into effect and this respondent insists that his and the said Lloyd's equitable right to have said settlement carried into execution is to be preferred over the pretended claim of said complainants to break it up for their own profit.

Respondent further answering says that he does not know and therefore cannot positively assert, that said complainants had
712 express notice of the rendition of said judgments or the settlement of said controversy, but he insists that by taking said leases under said City of Cleveland and taking possession of said premises while said suits were pending they are chargeable with notice of all the transactions relative to said suits between their land-

lord or his assigns and your Orator and said Lloyd and that, inasmuch as they did not object to said settlement and taking of judgment, they have no right in equity to interfere with the same at this time.

Respondent further answering says that he is not informed, and therefore cannot state the amount of damage it will be to said complainants to be dispossessed of the said leased premises; but he denies that the City of Cleveland is unable or unwilling to pay any just and legal claim which the complainants may have against it in respect to said leases; but whether the said city has property to the amount of ten thousand dollars subject to execution at law, this respondent does not know and cannot admit or deny the same, but he alleges, that said City is not insolvent and unable to pay its just debts and all just demands against it, and this respondent denies that the complainants could not collect ten thousand dollars or any other amount from said City, which they may recover as damages against said City, for any eviction which they may suffer from said leased premises, but he says that he is advised and believes that they cannot at law recover damages from said City for such eviction.

Respondent further answering says that he is advised and believes, that the facts set forth in said Bill do not make a case for the interference of a court of equity and that the complainants do not by the said bill state and set forth such facts as entitle them to the relief for which they pray in and by said bill or any other relief in equity, and this respondent shows to the Court the following exceptions to said bill and prays that he may have the same advantage and benefit of such exceptions as if the same had been taken by demurrer to said bill, viz:

1st. It appears from said bill that said complainants became the lessees of the said premises pending the said suits in ejectment for the recovery of the title and possession thereof by said Lloyd and this respondent and others, and are and were chargeable with notice of all the legal consequences of said suits, among which is the right of the parties thereto to settle the same on such terms as they may mutually agree upon.

713 2nd. It appears from the said Bill that the said City of Cleveland entered into no guarantee of title to said lots, to the said complainants, but that they took the same at their own risk and subject to all hazards, among which is verdict and judgment against their landlord, and the right of their landlord and his adversary to settle said suit adversely to the complainants' possession.

3rd. It appears by the said Bill that if said complainants shall suffer by an eviction from said premises, if they have any redress thereupon, it must be by an action at law against their landlord for breach of the covenants in said leases, or else for the recovery of damages for any fraud of which the said city may have been guilty towards the complainants in the settlement of said suits with respondent and the said Lloyd, for such fraud the complainants having full complete and adequate remedy at law.

4th. It appears from the said bill that so far as this respondent and the said Lloyd are concerned, that the complainants have not

now and never had any rights whatever, respondent and said Lloyd never having any contract agreement or deed with them or either of them in respect of said land and said suits having been commenced before the execution of said leases by said City to said Complainants and without any reference thereto and this respondent and said Lloyd being under no legal or equitable obligation to consult the interests or to regard the pretended claims of said complainants in any other light than they did of the said City, the said settlement being no more a fraud on the part of this respondent and said Lloyd on the said complainants than it was on the said City which freely and voluntarily made the same and is still willing and anxious to abide by the same as this respondent is advised and believes. And this respondent denies all unlawful combination and confederacy wherewith he stands charged, and prays to be dismissed with his costs &c.

H. CAMP.

THE STATE OF OHIO,
Cuyahoga County, ss:

The above named Hezekiah Camp makes oath and says that he has heard read the foregoing answer in Chancery by him subscribed and knows the contents thereof, and as to all the matters and things therein stated and set forth as upon information and belief
714 he believes them to be true and as to all the other matters and things stated and set forth they are true in substance and in fact.

H. CAMP.

Subscribed and sworn to before me this 29th day of January, 1851.

ROBT F. PAINE, *Clerk.*

EXHIBIT A.

This memorandum witnesseth that William B. Lloyd of New Orleans by his attorney, A. M. Lloyd and Hezekiah Camp of Cleveland, parties of the first part, in consideration of the agreement of the Cleveland, Columbus and Cincinnati Railroad Company, party of the second part hereinafter contained, have agreed to release quit claim to the said party of the second part, all their right, title & interest in and to the following described parcel of land or property in the City of Cleveland, to-wit: All the land bounded eastwardly by the west line of Water Street produced, southwardly by Bath Street reduced to one hundred feet in width measuring from the southwardly side thereof, as surveyed by Ahaz Merchant, as now used—westwardly by the stone pier so called being the pier erected by the United States at the mouth of Cuyahoga River on the eastwardly side thereof—and northwardly by Lake Erie extending indefinitely into the same between the eastwardly and westwardly boundaries above described produced northwardly into the Lake with all the rights privileges and appurtenances thereunto in any wise appertaining.

And the said party of the second part in consideration of said con-

veyance have agreed to use all suitable exertion & legal means to procure from the City of Cleveland the right to the perpetual occupancy of the above described premises permitting Bath Street to be increased in width to one hundred & thirty-two feet by drawing the northerly line thereof thirty-two feet further north than the northerly line thereof as now laid out and also extending the same northwardly in the form of L 150 feet measuring from the northerly side of said street when extended to 132 feet in width, along the said pier 100 feet in breadth measuring from the westwardly face of said pier which is to be kept open and unobstructed as a part of Bath Street and as a public landing.

And said party of the second part for the consideration 715 aforesaid further agrees to grant by perpetual lease to the said parties of the first part, all the right which they have or may acquire from the City of Cleveland, or otherwise, to the free and perpetual occupancy of the following described parcel of land or property, parts of the above described premises—free of rent—First—All that piece or parcel of land bounded westerly by the stone pier so called—southwardly by a line drawn parallel with the south line of Bath Street and two hundred & Eighty-two feet northwardly measuring at right angles therefrom—and by the northerly line of that part of Bath Street which is to extend northwardly along the pier as above described—northwardly by a line drawn parallel with the south line of Bath Street and 532 feet measuring at right angles therefrom—and eastwardly by a line to be drawn parallel with the railroad track which may be laid from Bath Street or near the same towards the northerly line of the stone pier so as to leave a space of thirty feet in breadth between the westwardly track and the line so to be drawn as an open carriage way—the parcel of land above described to be at least three hundred feet deep on the south line and one hundred & fifty feet on the north line thereof measuring from the westerly face of the Pier—It being understood that at least twenty feet in breadth (measuring from the westerly face of the Pier) is to be left open and unobstructed as a passageway along said Pier across the piece of land last described, the Lessee, however, having the right to pass property across the same.

Second. All that piece or parcel of land now covered by water, bounded southwardly by a line drawn westwardly from a point in the west line of Water Street produced 550 feet from the south line of Bath Street to the center line of Spring Street produced and at right angles with the lines of said streets—northwardly by Lake Erie extending into the same indefinitely between the westerly line of Water Street produced and the center line of Spring Street produced—easterly by the westerly line of Water Street and Westwardly by the center line of Spring Street produced—All that part of premises occupied by either party which fall within the lines of Spring Street extended northwardly when filled up to be kept open as an avenue or passageway, between Bath Street and the parcel last above described so to be leased to the parties of the first part and to

716 any pier that may hereafter be erected by either or both parties extending along or near the course of Spring Street into the Lake.

The said party of the second part hath further agreed, for the consideration aforesaid, to drive within two years from this date a substantial double row of piles from Stockley's Pier at a point 200 feet north of the southerly line of the parcel of land last described, westwardly to the center line of Spring Street produced, thence southwardly along said center line of Spring Street to the South line of the parcel of land last described suitable for protecting the same when filled up from the alluvion of the waves.

The parties of the first part, for the consideration aforesaid have further agreed to assign over to the party of the 2nd part all judgments and verdicts rendered and all suits now pending for obtaining the possession of all or any part of the premises excepting such part or parts thereof as are situated between the Stone pier and Commercial Street, with full right to prosecute or compromise or settle the same as said party of the 2nd part may deem proper. And the parties of the first part agree to take judgment with the assent of the party of the 2nd part, which is hereby given, provided the city council shall grant to the said party of the 2nd part authority to give such assent in certain actions in ejectment now pending to obtain possession of such land between the Pier and Commercial Street, and to clear so much thereof as lies southerly of the land agreed to be leased to said parties of the first part as aforesaid, by the first day of April next or before if required.—But if the party of the 2nd part shall be unable to procure from the City Council of the City of Cleveland authority to manage the defence of said ejectment suits for recovering possession by the parties of the first part of the land between the Pier and Commercial Street so that they shall have power to assent to the rendition of judgments as aforesaid then the parties of the first part will give to the party of the 2nd part the power and authority to manage & control said suits, except the judgment in Cuyahoga Court of Common Pleas, to reverse which a suit in error is now pending in the Court in bank, which judgment it is agreed between the parties shall be affirmed said party of the 2nd part agreeing to remove the tracks and clear off the whole ground between the Pier and Commercial Street and give the parties of the first part possession of all that part leased to them, by the first day of April next or as soon thereafter as practicable excepting that part affected by the said suit aforesaid.

The said party of the second part also agrees in either of
717 the above cases to pay the lessees of the land last described or their legal representatives or assigns the fair value of their improvements on said land, and if in their arrangement with the City, they are required to make to said lessees any additional compensation in consideration of their being deprived of the remainder of their several terms, they will in that case make equal compensation, taking into view the unexpired term of the several leases, the extent and value of the land leased to each as well on that part of the premises agreed to be leased by the party of the 2nd to the party of the first part as the remainder thereof except in the lease of H. Camp of that embraced in the suit now in bank. But if not so required they will nevertheless pay to H. D. Camp & A. Holbrook

the price or "bonus" paid by them to J. G. Stockley for three fourths of his leasehold interest in the premises not exceeding seven hundred and fifty dollars deducting therefrom a ratable proportion for the time they may have enjoyed said leasehold interest.

It is understood and agreed by the above named parties, that if the party of the second part shall not within four months from this date be able to negotiate with the City Council of the City of Cleveland for the occupancy of the premises & authority to manage the pending suits affecting the same so as to enable the said party to carry out this agreement with the parties of the first part then this agreement is to be null & void and the making thereof is in no wise to prejudice the rights of either party.

It is further agreed that the space between the passenger house proposed to be erected near the west end of Bath Street and the south line of the first described parcel of land to be leased to the parties of the 1st part is to be kept open as a public way.

In witness whereof, the aforesaid parties have subscribed this memorandum this 8th day of August, 1849.

(Signed) WM. B. LLOYD,

By His Attorney, A. M. LLOYD.

HEZEKIAH CAMP,

THE CLEVELAND, COLUMBUS &
CINCINNATI RAIL ROAD COM-
PANY,

By Their President, ALFRED KELLY.

Judge SANDERS: I call attention to a Council Proceeding which I think is already in the record, but I call attention to it with reference to a paper I wish to offer. It appears under date September

19, 1848: "Notification from the Directors of the Cleveland, 718 Columbus & Cincinnati Railroad Company that on the 8th instant it was resolved to take possession of the land known as the Bath Street property between the pier and Water Street, for depot grounds for said Company, was referred to select committee Messrs. Starkweather, Seymour and Hubby. Adopted."

Whereupon defendants The Cleveland & Pittsburgh Railroad Company and the Pennsylvania Company offered in evidence Communication from the Secretary of the Cleveland, Columbus & Cincinnati Railroad Company under date of September 12, 1848, to E. G. Williams, Esq. Attorney for the Cleveland & Pittsburgh Railroad Company.

(Objected to by plaintiff.)

Judge SANDERS: Do you object to the form of it?

Mr. LAWRENCE: I think I will object to the form of it, on the ground that it does not purport to be addressed to the Cleveland & Pittsburgh Railroad Company; but my main objection is on the ground that it is a paper that we were not a party to and had no knowledge of.

Judge SANDERS: I claim it is competent simply as throwing light on the question of the facts here that we wish to establish, that the Cleveland & Pittsburgh Railroad, prior to the making of this con-

tract in 1848, was claiming rights in this property; and here is a formal notice to us as persons claiming an interest in the property.

Mr. LAWRENCE: You stated about it: "Our records show that this gentleman for years and during all that time was an attorney for the company and was a member of the board of directors of the company, and this paper is filed away in the office with the papers pertaining to this property." Then the court said: "If you admit that, I will let the paper in."

The COURT: Simply for the purpose of showing that those parties were claiming some interest in it, I will overrule the objection.

(To which ruling of the court the plaintiff then and there excepted.)

Said paper is as follows, to wit:

C., C. & C. R. R. OFFICE,
SEPTEMBER 12TH, 1848—Cleveland.

E. G. Williams, Esq'r, Att'y:

You are hereby notified, at a meeting of the Directors of the Cleveland, Columbus & Cincinnati Rail Road Company, on

Friday the 8th day of September A. D. 1848, at their office,
719 on motion Resolved: That the ground bounded Eastwardly

by the Westerly line of Water Street produced—Southwardly by a line drawn parallel with the Southerly line of Bath Street and One hundred feet northwardly therefrom, and Westerly by the east pier at the mouth of the river, and Northwardly by the lake, with the privilege of extending said ground into the lake, is necessary for depot grounds, stations warehouses, Car and Engine houses for the use of the Cleveland, Columbus & Cincinnati Rail Road Company, and that said ground be taken possession of for that purpose, and that the City Council of the City of Cleveland, and all other claimants of said ground be immediately notified thereof.

S. C. BALDWIN, *Secretary.*"

And further to maintain the issues on their part, said defendants The Cleveland and Pittsburg Railroad and the Pennsylvania Company, offered in evidence Lease of The Cleveland and Pittsburgh Railroad Company to the Pennsylvania Company, made in 1871, originally to the Pennsylvania Railroad Company and assigned by that company to the Pennsylvania Company, as follows:

Lease.

Cleveland & Pittsburg Railroad Co.
to
The Pennsylvania Railroad Co.

This Indenture, made the twenty-fifth day of October, in the year of our Lord one thousand eight hundred and seventy-one (1871), between The Cleveland and Pittsburgh Railroad Company, duly formed and organized under the laws of the States of Pennsylvania and Ohio, party of the first part, and The Pennsylvania

Railroad Company, duly formed and organized under the laws of the State of Pennsylvania, party of the second part, Whereas, the said party of the first part owns and operates a certain railroad commonly known as the Cleveland and Pittsburgh Railroad, which extends from the town of Rochester, in the State of Pennsylvania, by the way of Wellsville, in the State of Ohio, to the city of Cleveland, in the State of Ohio, and also extends from the mouth of Yellow Creek, near Wellsville, via Steubenville to Bellaire, in the said State of Ohio; and also a certain other Railroad or Railway which extends from Bayard to New Philadelphia, in the State of Ohio, and

which intersects and connects with the said Cleveland and
720 Pittsburgh Railroad at Bayard, in the said last mentioned State, known as the Tuscarawas extension of the Cleveland and Pittsburgh Railroad; also certain tracks, shops, depots and other property in the cities of Manchester, Allegheny and Pittsburgh, in the County of Allegheny, State of Pennsylvania; and whereas the said party of the second part owns and operates a certain Railroad, commonly known as the Pennsylvania Railroad, which connects with the said Cleveland and Pittsburgh Railroad aforesaid, by means of intervening Railroad, and extends by way of Harrisburgh to the city of Philadelphia, in the said State of Pennsylvania; and whereas the said Pennsylvania Railroad and the said Cleveland and Pittsburgh Railroad, united by means of intervening road, constitute practically a continuous line of railroad, extending from the city of Philadelphia aforesaid, to the cities of Cleveland and Bellaire and to other points, and the parties hereto deem it to be for their common interest, and to the advantage and benefit of each of them, that the said Cleveland and Pittsburgh Railroad should be leased and operated by the said Pennsylvania Railroad Company, its successors and assigns, for the annual rental hereinafter reserved, and upon and subject to all and singular the terms, agreements and conditions hereinafter mentioned and set forth.

Now, therefore, This Indenture Witnesseth, That the said party of the first part, as well for and in consideration of the rents, covenants and agreements hereinafter mentioned, reserved and contained on the part and behalf of the said party of the second part, to be paid, kept and performed, as of the sum of one dollar, lawful money, paid by the said party of the second part, to the party of the first part, the receipt whereof is hereby acknowledged, hath granted, demised and leased, and by these presents doth grant, demise and lease unto the party of the second part, all and singular, the railroad now owned and operated by the said party of the first part, and commonly known as the Cleveland and Pittsburgh Railroad, which extends from the point of connection with the Pittsburgh, Fort Wayne and Chicago Railway, at Rochester, in the County of Beaver and State of Pennsylvania, by the way of Wellsville, in the State of Ohio, into the city of Cleveland, Cuyahoga County, State of Ohio, and also extends to the town of Bellaire, in the County of Belmont and State of Ohio, with branch to New

Philadelphia, also in said State of Ohio, and also with certain tracks in Manchester, Allegheny city and Pittsburgh, in said State of Pennsylvania, being a distance of two hundred and two (202) miles, more or less, including in the premises hereby demised, all the railroads, ways and rights of way, and all the depot grounds, docks, real estate property, and all the main and side tracks, bridges, viaducts, culverts, fences and other structures, and all the depots, station houses, engine houses, car houses, freight houses, wood houses and other buildings, and all the machine shops and machinery and fixtures therein, and other shops appertaining to the said Cleveland and Pittsburgh Railroad and the said extensions, branches, tracks, or either thereof, and now owned by the said party of the first part, and including also all locomotives, tenders, passenger, baggage, freight and other cars, and all the other rolling stock and equipment and property belonging to the said party of the first part, and all revenues arising therefrom, and also the benefits arising from existing sinking fund and all accretions thereof, and all funds of similar character, which may be provided for and paid by the said second party during the term of this lease, together with all rights, privileges and franchises connected with, or relating to, the said demised Railroad, and the said extensions, branches, tracks, or either thereof, or to the construction, maintenance, use or operation of the same. Provided always, however, that nothing herein contained shall operate to grant or demise, or be construed to include the franchises to be a corporation, heretofore granted to the said party of the first part, or the corporators thereof, by the States of Pennsylvania and Ohio, respectively, or any other right, privilege or franchise which is or may be necessary to preserve the corporate existence or organization of the party of the first part, under its several charters, and all the said franchises to be a corporation, and also all the rights, privileges and franchises last aforesaid, are hereby expressly reserved and excepted from these presents.

To Have and To Hold the said Railroads and premises, with the appurtenances, unto the said party of the second part, its successors and assigns, from the first day of December, in the year one thousand eight hundred and seventy-one, (1871), for and during and until the full end and term of nine hundred and ninety-nine (999) years thence next ensuing, and fully to be complete and ended: the said party of the second part, its successors and assigns, yielding and paying therefor unto the said party of the first
 722 part, its successors or assigns, yearly and every year during the said term hereby granted, the yearly rent hereinafter specified, and keeping and performing all and singular the covenants and agreements hereinafter set forth to be by the said party of the second part kept and performed.

Article First. The annual rent hereby reserved shall be and consist of the sums in this article specified, and the same shall be paid in lawful money of the United States of America, by the party of the second part to the party of the first part, at the times and places and in the manner following:

First. Seven hundred and eighty-six thousand, seven hundred and ninety-five (786,795) dollars shall be paid in each and every year during the term aforesaid, in quarter-yearly installments; that is to say, one hundred and ninety-six thousand six hundred and ninety-eight dollars and seventy-five cents on the first day of March, for and in respect to the quarter ending on the last day of February preceding; a like sum of one hundred and ninety-six thousand six hundred and ninety-eight dollars and seventy-five cents on the first day of June, for and in respect to the quarter ending on the last day of May preceding; a like sum of one hundred and ninety-six thousand six hundred and ninety-eight dollars and seventy-five cents on the first day of September, for and in respect to the quarter ending on the last day of August preceding; and a like sum of one hundred and ninety-six thousand six hundred and ninety-eight dollars and seventy-five cents on the first day of December, for and in respect to the quarter ending on the last day of November preceding; the first quarterly payment thereof to be made on the first day of March, in the year one thousand eight hundred and seventy-two (1872).

The said several installments shall be paid at the office or agency for the time being, of the party of the first part, in the city of New York, except in any case in which the party of the first part shall have designated in writing a different place, within either of the States in which some part of the said Railroad is situate, for the payment of any installment, in which case the payment of such installment shall be made at the place so designated. Such sum of seven hundred and eighty-six thousand seven hundred and ninety-five dollars shall be exclusive of all taxes which are now or may at any time hereafter be imposed by the government of the

723 United States, or by or under the authority of the government or laws of either of the States of Pennsylvania and Ohio, upon the stockholders of the party of the first part, or any of them, in respect to any capital stock in, or any dividends upon, or any income derived from capital stock, in the said Cleveland and Pittsburgh Railroad Company, or upon such capital stock or any income derivable therefrom, so far as such taxes shall be payable or collectible through the party of the first part of the party of the second part or any officer or agent thereof, or shall be in any lawful manner required to be collected or paid through either of the said parties, or any officer or agent thereof, before the actual receipt of such dividends by such stockholders; it being the true intent and meaning of these presents, that the said sum of seven hundred and eighty-six thousand seven hundred and ninety-five dollars shall at all times hereafter be and remain applicable by the party of the first part, as a dividend fund for the stockholders of the said party of the first part, without any deduction or abatement on account of any such tax, and that every such tax shall be paid by the party of the second part, in addition thereto.

Second. In addition to the aforesaid sum of seven hundred and eighty-six thousand seven hundred and ninety-five dollars, a further sum shall be paid by the party of the second part to the party

of the first part, in each and every year, which shall be sufficient to provide for and pay all installments of interest and all installments of sinking fund that accrue after December 1st, 1871, and which may become payable during such year by the party of the first part, upon Bonds issued or owing by the said first party; and also such sums of money as may be needed or required to redeem and pay the principal of said Bonds as they mature. Provided the said first party will furnish its duly executed Bonds, secured by a general mortgage on its Railroad, its franchises, equipment, revenues and property of every kind and nature whatsoever, acquired or that may thereafter be acquired. And said first party hereby agrees to deliver to said second party, Bonds duly executed and secured to such amount, and in such form, and at such rates of interest, as, in the judgment of said second party, will be sufficient, at current market values therefor, to meet the principal of all said

724 Bonds redeemed, paid or exchanged by said second party, and also to pay for or to exchange all outstanding Bonds at their par value, which new Bonds the said second party shall pay as they mature or cause to be exchanged for new Consolidated Mortgage Bonds, and all Bonds so paid or exchanged shall be duly canceled and destroyed, and the liens therefor be satisfied; and upon the issue of said new Consolidated Bonds, for any of the purposes aforesaid, the said second party shall become liable for, and pay all interest on, said new Bonds, and when the principal of said new Bonds mature they shall be redeemed in like manner, and new Bonds be substituted so often as the same may be required for that purpose during the term of this lease. And such of said Bonds as shall, by the terms thereof, be convertible into the Capital Stock of the said party of the first part, shall still be exchangeable, at the option of the holders or owners thereof, into the stock of the Company as it may then exist; and in lieu of the interest on said Bonds, if any are so converted, the said parties of the second part shall pay a like amount on account of the stock substituted therefor. Provided, however, and it is hereby agreed in respect to the several installments of rent, interest and sinking fund, by this article made payable at the office or agency of the party of the first part in the city of New York, that if the party of the first part shall give to the party of the second part reasonable notice in writing for the payment of any such installment, at a place within either of the States within which the said Cleveland and Pittsburgh Railroad, or any part thereof, is situate, such installments shall be paid at that place.

And said party of the first part hereby promises and agrees, that if the several sums of money herein provided to be paid on account of interest and sinking fund on said bonds, shall be paid to the said party of the first part, as herein agreed, the same shall be promptly applied to the payment of said interest and sinking fund, and due evidence of such payments and application be furnished to the said party of the second part when required; and that if the said party of the first part receiving the several sums of money aforesaid, shall, in any year, fail to apply the same in payment of such interest and sinking fund as it matures, the interest or sinking fund so re-

maining unpaid may be paid by the said party of the second part directly, to the parties to whom the same may be due from the said party of the first part, and the amount thereof charged
725 to the said party of the first part on account of the rent herein reserved.

Article Second. It being provided herein that the term hereby granted shall begin on the first day of December, in the year eighteen hundred and seventy-one, it is hereby agreed and declared that the rental provided to be paid by Article First of these presents, shall commence to run on that day and shall be payable as the same matures, beginning with the said first day of March, A. D. eighteen hundred and seventy-two.

Article Third. The party of the second part, for itself, its successors and assigns, hereby covenants, promises and agrees to and with the party of the first part, its successors and assigns, in consideration of the execution to it of this lease, that the said party of the second part, its successors and assigns shall and will, yearly, and in each and every year of and during the term aforesaid, well and truly pay, or cause to be paid, unto the said party of the first part, its successors or assigns, the yearly rent hereinbefore reserved, to wit, the several sums provided or required by Article First of these presents, to be paid by the said party of the second part to or on account of the said party of the first part, in the installments, at the times and in the manner in the said article mentioned.

Article Fourth. The party of the second part shall and will, at its own proper cost and expense, and without deduction from the rent aforesaid, operate and run the said demised Railroads, at all times during the said term, in the same manner as the said party of the first part (as the owner thereof or otherwise) is now or shall or may at any time hereafter be required by law to do; and the said party of the second part shall and will, at its own proper cost and expense, and without deduction from the rent aforesaid, at all times during said term, maintain, preserve and keep the Railways and premises hereby demised, and every part of the same, in thorough repair, working order and condition, and supplied with rolling stock and equipment, so that the business of said demised Railway shall be preserved, encouraged and developed, and that the same shall be at all times done with safety and expedition, and the public be accommodated, in respect thereto, with all practicable convenience and facilities, and that all future growth of such business, as the same may arise or be reasonably anticipated, shall be fully provided for and secured, and the party of the second part hereby promises and agrees to and with the party of the first part, that the said

726 party of the second part shall and will, at its own proper cost and expense, and without deduction from the rent aforesaid, from time to time, and whenever needed during the term aforesaid, do or cause to be done to and upon the said demised Railroads and premises, any and all repairs, replacements and renewals, and also, in the manner expressed in the Ninth Article of these presents, any and all additions, constructions and improvements which may be reasonably required for the purposes aforesaid, and provide thereon such rolling stock and equipment and other facili-

ties as shall or may be reasonably required for the purposes aforesaid; and that the said party of the second part shall and will use all reasonable efforts to maintain, develop and increase all the business of said Railroads.

Article Fifth. The said party of the second part shall and will from time to time, and as often as the same shall become due, also pay and discharge, without deduction from the rent aforesaid, any and all taxes, assessments, duties, imposts and charges whatsoever, which shall or may be levied, assessed or imposed, during the said term by any governmental or lawful authority whatsoever, upon the said demised Railroads and premises or any part thereof, or upon any business or earnings or income of the same, or upon the party of the first part, with respect to the said demised Railways and premises or any part thereof, or any business or earnings or income of the same; or upon the party of the first part, for or with respect to any money which shall be paid or which shall become payable to the said party of the first part, as or on account of the rental hereinbefore reserved in Article First of these presents, or any money which shall be paid or become payable to the said party of the first part, in pursuance of these presents, or with respect to any interest or rights under these presents, or upon such money interests or rights, or which shall or may be levied, assessed or imposed upon any stockholder or stockholders of the party of the first part, in respect to capital stock in the said party of the first part, or in respect to any dividends upon or any income from such capital stock, or upon such dividends or income or capital stock, by or under any governmental authority which is or may be exercised over any territorial jurisdiction within which any part of the said demised Railroads and premises is or may be situate, except such as shall be collected by or under the laws of any State from its own citizens personally, without any action upon or through or any intervention or service of either of the parties hereto or any officer or agent thereof; it being the true intent and meaning of these presents that all governmental charges upon the aforesaid property or the stockholders, with respect to such property or income therefrom, which

727 may be imposed by or under any governmental authority capable of enforcing such charges against or through the said property or the corporation owning or leasing the same, shall be assumed and satisfied by the party of the second part, however the forms thereof may change during the term of these presents; but that the said party of the second part shall not be or become liable to pay any tax imposed by any law of any of the States within which the said Cleveland and Pittsburgh Railroad or any part thereof is situate, or by any law of any other State upon citizens of such State personally, in respect to stock held by them or dividends or income derived by them therefrom, which shall be collected from such citizens personally, without any action upon or through or any intervention or service of the party of the first part or any officer or agent thereof; nor shall anything herein contained be construed to render the party of the second part liable to pay any tax imposed by the government of the United States or any State

specifically upon income derived from interest on the Bonds of the party of the first part; and said second party shall also pay the proportion of taxes assessed for the years 1871 and 1872, that rateably accrue after possession of property, December 1st, 1871.

Article Sixth. Whereas the said party of the first part has also hereinbefore made and entered into other contracts (for the use of a part of the Pittsburgh, Fort Wayne and Chicago Railway) and agreements in relation to the business of said demised Railroads; and it is the intent and meaning of these presents, that all contracts relating thereto should be assumed and carried out by said party of the second part, that the benefit thereof should inure and the liability thereof should rest on the said party of the second part, in the place and stead of the party of the first part. Now, therefore, the said party of the first part hereby sells, assigns, transfers and set over unto the said party of the second part, all the right, title and interest of the said party of the first part, in and under all contracts and agreements in relation to the business to be done on the said demised Railroads, or any part thereof not hereinbefore specifically transferred, and the said party of the second part hereby assumes the performance of the same on the part and behalf of the said party of the first part, according to the true intent and meaning thereof; and the said party of the second part hereby covenants, promises and agrees to and with the said part- of the first part that the said party of the second part shall and will at all times hereafter forever save and keep harmless and indemnified the said party of the first part, its successors and assigns of, from

728 and against all costs, damages, expenses, liabilities, claims
and demands whatsoever, which may exist or shall or may
arise under the said contracts and agreements or either
thereof.

Article Seventh. The party of the second part shall and will, at all times during the term aforesaid, allow and pay to the party of the first part, without deduction from the rent aforesaid, and as part of the necessary expenses of carrying on the business of the said demised Railroads, and for the purpose of enabling the said party of the first part to maintain and preserve its corporate organization and pay the salaries of its officers and provide for payment of dividends, coupons and principal of Bonds at their maturity from time to time, and also provide such transfer and registry of stock as to the said first party may seem needful, the sum of ten thousand dollars per annum, to be paid in four equal quarterly installments of twenty-five hundred dollars each, on the first days of March, June, September and December of each and every year of the said term, the first payment of twenty-five hundred dollars to be made on the first day of March, A. D. eighteen hundred and seventy-two.

Article Eighth. The said party of the second part shall and will, at all times during the term aforesaid, and the continuance of this lease, keep an office in the city of Cleveland, which shall be open at all reasonable hours and times for the transaction of the business of the said demised Railroads, and shall reserve and fur-

nish in the said office, free of charge, one suitable and convenient room for the use of the President and Secretary and Board of Directors of the said party of the first part; and the said party of the second part shall, at all times during the said term, keep at the said office in the city of Cleveland, full, true and just accounts of all moneys received and business done upon the said demised Railroads and premises, and of all moneys paid, laid out and expended, and liabilities incurred in connection with the same, and also full statistical accounts, similar to those now kept by the said party of the first part, in or under the direction of a certain accounting department, designated as a Bureau of Statistics, at the office of the said party of the first part, in the city of Cleveland. The accounts to be kept by the said party of the second part, as above provided, and any and all accounts which shall or may be kept by the said party of the second part in relation to the said demised Railroads, or the business of the same, shall, at all reasonable hours and times during the continuance of this lease, be open to the inspection and examination of the President of the said party of the first part, and of such other person or persons as the said party of the first part shall from time to time, or at any time, by resolution of its

729 Board of Directors, appoint to examine the same; and the said party of the second part shall, at its own proper cost and expense, annually, to wit: on or before the first day of March in each year, during the continuance of this lease, furnish to the said party of the first part a detailed statement, duly authenticated, of the earnings, income and receipts arising from the said demised Railroads and premises during the year ending on the thirtieth day of November last preceding the said first day of March, and also a detailed statement, similarly authenticated, of all expenditures made by the said party of the second part upon the said demised Railroads and premises, in the repair, replacement, renewal, improvement and equipment thereof, which statement shall specify the purpose of any and all such expenditures; and it is hereby further agreed and declared that the party of the second part shall, at its own proper cost and expense, from time to time, and whenever necessary for the use of the party of the first part, make out and furnish to the said party of the first part any and all reports and statements which the said party of the first part is now, or may be hereafter, required to make or file, under or by virtue of any law of either of the States of Pennsylvania or Ohio, now existing or which may hereafter be enacted by any other lawful or competent authority.

Article Ninth. The party of the first part hereby agrees that for the purpose of enabling the party of the second part to meet the obligations of the party of the first part to the public, by making, from time to time, such improvements upon and additions to the said Cleveland and Pittsburgh Railroad, in the extension of facilities for increasing business by additional real estate and rights of way, locomotives, cars and other transportation equipment, also tracks and depots, shops and equipments, and the substitution of stone or iron bridges for wooden bridges, or steel rail for iron rails,

the party of the first part will issue, from time to time, a special stock, which shall bear such name as shall be hereafter designated by said second party, or bonds or other securities, to represent the cost of all such property, improvements, substitution and changes, which special stock or bonds shall be issued in such forms as may, from time to time, in the opinion of said second party, be found most available with respect to economy of interest and negotiability, and shall be consistent with the legal powers of the party of the first part and the rights secured by these presents, which special stock or bonds or other securities shall be issued on the conditions following. The said party of the second part, as lessee, shall guarantee

the payment semi-annually or quarterly thereon of such
730 rate of interest as may be fixed therefor, by the party of the second part, said interest to be paid by the party of the second part, to the party of the first part, or to the holders thereof, without deduction from the rent hereinbefore reserved; and the said special stock or bonds or other securities shall be issued only in respect to improvements of and additions to the said Railroad, which shall in the judgment of said second party be needful and be authorized by the Engineer and Superintendent, and be duly approved by the Board of Directors of said second party, and duly certified evidence thereof be furnished, from time to time, to the said party of the first part; and the said second party shall be entitled to receive from said first party every six months during the term of this lease; and said first party agrees to pay over every six months all securities that may be needful to settle and adjust all outlay made by said second party under the provisions of this article. The party of the first part shall not, at any time during the term aforesaid, and the continuance of this lease, make or issue any bond, stock or obligation in addition to the bonds, stocks or obligations issued and outstanding or duly authorized previous to the date of this lease, without the consent in writing of the said party of the second part first had and obtained thereunto.

Article Tenth. Possession of the said demised Railroads and premises shall be given by the party of the first part to the party of the second part, on the first day of December, eighteen hundred and seventy-one, and upon the delivery of such possession, the said party of the first part shall deliver and transfer to the said party of the second part, for use upon the said demised Railroads and premises, all machinery, tools, implements, furniture, fuel, material and other railroad supplies, belonging to the said party of the first part, which shall have been procured for the use of the said Railroads or either of them, and shall then remain on hand. And the said party of the first part shall settle, pay and discharge all wages, salaries and debts and liabilities incurred in operating the said demised Railroads, or either or any part of either thereof, up to that time, or for construction done or equipment received up to that time, and all other debts and liabilities which shall have matured or been incurred prior to the said first day of December, except those hereinbefore agreed to be paid or provided for by the said party of the second part; provided, and it is hereby agreed, that the said

party of the second part shall and will, at the end of the time aforesaid, or other sooner determination of this lease, transfer and deliver in return to the said party of the first part, machinery, tools, implements, fuel, materials and other railroad supplies, equal
731 in value to those delivered to its as aforesaid.

Article Eleventh. The said party of the second part shall and will, at all times during the term aforesaid, bear, pay and discharge, at its own proper cost and expense, and without deduction from the rent hereinbefore reserved, and any and all expenses, costs, damages, liabilities, claims and demands whatsoever, which shall or may arise out of the possession, management or operation of the said demised Railroads and premises, or of either or any part of either thereof, or out of the business of the same, and shall and will, at all times during the term aforesaid, hold, save and keep harmless and indemnified the said party of the first part, of, from and against any and all expenses of operating the Railroads and premises hereby demised, and all damages, liabilities, actions and causes of action, suits, claims and demands for injury to persons or property, or for causing the death of any person or thing through accident, neglect or default, during said term, or for breach of contract or wrong done or suffered by the said party of the second part, in the refusal to transport or negligence in transporting any persons, property or thing, or by the loss, conversion or non-delivery of any property which the said party of the second part shall have agreed or undertaken or be bound to transport over the said Railroads, or either or any part of either thereof; or which the said party of the first part, as the owner of the said Railroads hereby demised, or either or any part thereof, is or shall be under any legal obligations by contract, public duty or otherwise, to transport thereon, and of, from and against any and all costs, damages, liabilities, actions and causes of action, claims and demands whatsoever which shall or may arise out of or in respect to the management, operation or business of the said demised Railroads and premises or either or any part of either thereof, during the term aforesaid. And the said party of the second part shall and will defend all suits and claims which shall or may be brought against the party of the first part during the said term in respect to any matter or thing arising out of the management or operation of the said demised Railroads, or either of them, or any part of either thereof, and indemnify and save harmless the party of the first part of, from and against any and all matters and things whatsoever, existing or to arise, which might or could be a charge upon or operate to reduce the rent hereinbefore reserved or the fund aforesaid, to be applicable to the payment of dividends on the stock of the party of the first part, excepting only the debts and liabilities incurred in operating the said demised Railroads or either of them prior to the first day of

732 December in the year 1871, which are mentioned in Article

Tenth of these presents. And it is hereby further declared and agreed, that all the provisions of this article in respect to indemnifying and saving harmless the party of the first part, shall apply to the Railroads and premises of which leases or operating

contracts exist, and each thereof, and the business of the same during the term of such leases or operating contracts respectively, in the same manner and to the same extent as if the said Railroads of which leases or operating contracts exist were portions of the premises demised by these presents.

Article Twelfth. In case the said party of the second part, its successors or assigns, shall at any time, or times, hereafter, during the term aforesaid, fail or omit to pay the rent hereinbefore mentioned or provided to be paid by the said party of the second part, or any part of such rent, when the same shall become payable as hereinbefore specified, or in case the said party of the second part, its successors or assigns, shall fail or omit to keep and perform the covenants and agreements herein contained, or any of them, and shall continue in default in respect to the performance of such covenant or agreement for the period of ninety days, then, and in either and every such case, it shall be lawful for the said party of the first part, its successors or assigns, at its or their own option, to enter into and upon the Railroads and premises hereinbefore demised, and any and every part thereof, and remove all persons therefrom, and from thenceforth the said demised Railroads and premises, with the equipments and appurtenances thereof, and all additions and improvements which shall or may have been made to the same, to have, hold, possess and enjoy, as of the first or former estate of the said party of the first part in the said demised premises; and upon such entry for non-payment of rent, or break or nonperformance of any covenant or agreement herein contained, to be by the said party of the second part observed or performed, all the estate, right, title, interest, property, possession, claim and demand whatsoever of the said party of the second part, its successors or assigns, in or to the said demised Railroads and premises, or either, or any part of either thereof, as well as all the right, title and interest of the said party of the second part, its successors or assigns, in, under, or by virtue of the leases, contracts and agreements, or either of them hereby assigned or transferred to the said party of the second part, or assumed by it, shall wholly and absolutely cease, determine and become void, anything hereinbefore contained to the contrary thereof, notwithstanding; but, in case of re-entry, as aforesaid, the rent provided in Article First of these presents, and the several installments thereof, shall be apportioned from the times of the last preceding payments, of such installments up to the time of such re-entry, and such portions thereof as would have been payable, in respect to the intervening time, if the whole period in respect to which such installments were payable and elapsed, shall be deemed and taken to be due and payable, and the same shall be paid by the party of the second part. And it is further declared and agreed that such re-entry shall not waive or prejudice any claim or right of the party of the first part to and for damages against the party of the second part on account of such non-performance of rent, or nonperformance or breach of the terms of this lease, and all such claims and rights are hereby expressly preserved to the said party of the first part.

Article Thirteenth. The said party of the second part hereby covenants, promises and agrees to and with the said party of the first part, that at the end of the said term, or other sooner determination of this lease, the said party of the second part shall redeliver and surrender up to the said party of the first part, its successors or assigns, the said demised Railroads and premises in at least as good order and condition as the same shall be delivered to the said party of the second part under this lease, and with such additions, betterments and improvements as shall have been made thereto; and also the rolling stock, equipment and other property delivered under this lease, in as good order and condition as reasonable use and wear thereof, proper repairs and replacements thereof being made from time to time, will permit, or rolling stock and equipment, or other similar property equal in value thereto, and also all additional rolling stock or equipment which shall be acquired or provided for use upon the said Railroads and premises or any of them, or upon any of the Railroads held by the party of the first part under leases or operating contracts which are assigned by these presents, so far as the said equipment and betterments shall have been provided by the issue of stock or bonds of said first party, under the terms of this lease.

Article Fourteenth. And the said party of the first part hereby covenants, promises and agrees to and with the said party of the second part, its successors and assigns, that the said party of the first part, its successors or assigns shall and will, at any time or times hereafter, and whenever thereunto requested by the said party of the second part, its successors or assigns, execute, acknowledge and deliver to the said party of the second part, its successors or assigns,

734 at the proper cost and expense of the said party of the second part, its successors or assigns, any and all such further instruments and assurances in the law for the better demising and leasing of the said Railroads and premises to the said party of the second part, its successors or assigns, upon and subject to all and singular the rents, covenants, agreements and conditions hereinbefore reserved and mentioned as by the said party of the second part, its successors or assigns, or by its or their counsel, learned in the law, shall be reasonably advised, devised or required; and the said party of the second part covenants, promises and agrees to and with said party of the first part, as aforesaid, that it shall and will at any time or times hereafter, and whenever thereunto requested by said party of the first part, execute, acknowledge and deliver to said party of the first part, its successors or assigns, any and all instruments for the more effectually assuring unto said party of the first part, the payment of the rent hereinbefore reserved or agreed to *the* paid and the performance of the promises and agreements hereinbefore set forth on the part and behalf of the said party of the second part to be performed, as by said party of the first part or by its counsel, learned in the law, shall be reasonably advised, devised or required.

Article Fifteenth. It is hereby expressly declared and agreed by and between the said parties hereto, that these presents, and all the articles, covenants, agreements, terms and conditions thereof, shall take effect on the first day of December, A. D. eighteen hundred and

seventy-one, and the same shall be binding upon the said parties hereto respectively, and their respective successors and assigns.

In witness whereof, the said parties hereto have caused their respective seals to be hereunto affixed, and the same to be attested by the signatures of their respective presidents and secretaries, the day and year first before written.

THE CLEVELAND AND PITTSBURGH
RAILROAD COMPANY,

[L. S.]

By J. N. McCULLOUGH, *President*,

Attest:

G. A. INGERSOLL, *Secretary*.

THE PENNSYLVANIA RAILROAD COM-
PANY,

[L. S.]

By J. EDGAR THOMSON, *President*,

Attest:

JOS. LESLEY, *Secretary*.

Sealed and delivered in the presence of us,

JOS. LESLEY.

JNO. P. GREEN.

JNO. THOMAS.

J. W. REILLY.

735 STATE OF OHIO,

Town of Wellsville,

County of Columbiana, ss:

Be it remembered, that on this seventh day of November, A. D. 1871, before me, the subscriber, a notary public within and for said county and State, duly commissioned and qualified according to law, personally appeared George A. Ingersoll, Secretary of the foregoing named corporation, The Cleveland and Pittsburgh Railroad Company, who, being duly sworn according to law, did depose and say, that he was personally present at the execution of the foregoing indenture of lease, and saw J. N. McCullough, President of said corporation, execute the same and affix the seal of the said corporation thereto, as his own act and deed, and as the act and deed of said corporation; that the seal so affixed thereto is the common or corporate seal of said corporation; and that the signatures of J. N. McCullough as President, and of this deponent as Secretary, thereto subscribed in attestation of the due execution and delivery of said indenture, are in the proper and respective handwriting of said J. N. McCullough and of this deponent.

G. A. INGERSOLL.

Sworn and subscribed before me, the day and year aforesaid.
Witness my hand and official seal.

[L. S.]

JAS. W. REILLY,

Notary Public.

STATE OF PENNSYLVANIA,
City of Philadelphia, ss:

Be it remembered, that on this sixth day of November, A. D. 1871, before me, the subscriber, a notary public of the Commonwealth of Pennsylvania, in and for the said city, personally appeared Joseph Lesley, Secretary of the foregoing named corporation, The Pennsylvania Railroad Company, who, being duly sworn according to law, did depose and say, that he was personally present at the execution of the foregoing indenture of lease, and saw J. Edgar Thomson, President of said corporation, execute the same and affix the seal of said corporation thereto, as his own act and deed, and as the act and deed of said corporation; that the seal so affixed thereto is the common or corporate seal of said corporation; and that the signatures of the said J. Edgar Thomson as President, and of this deponent as Secretary, subscribed thereto, in attestation of the due execution and delivery of said indenture, are in the proper and respective handwriting of said J. Edgar Thomson and of this deponent.

JOS. LESLEY.

Sworn and subscribed before me, the day and year aforesaid.
 Witness my hand and official seal.

[L. S.]

R. D. BARCLAY,
Notary Public.

STATE OF OHIO,
Columbiana County, ss:

Be it remembered, that on this seventh day of November, A. D. 1871, before me, the subscriber, a notary public within and for said county and State, duly commissioned and qualified according to law, personally appeared the said J. N. McCullough, President, and G. A. Ingersoll, Secretary, of The Cleveland and Pittsburgh Railroad Company, and severally acknowledged that they did sign and affix thereto the seal of the said corporation, by order of its Board of Directors, the foregoing instrument of lease, and that the same is their and the said Cleveland and Pittsburgh Railroad Company's free act and deed, for the uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year above written.

[L. S.]

JAMES W. REILLY,
Notary Public.

Supplementary Agreement.

Made this thirtieth day of November, in the year of our Lord one thousand eight hundred and seventy-one, (1871,) between the Cleveland and Pittsburgh Railroad Company, party of the first part, and the Pennsylvania Railroad Company, party of the second part:

Whereas, The said Cleveland and Pittsburgh Railroad Company, party of the first part, did, by indenture of lease, bearing date the twenty-fifth day of October, A. D. 1871, grant, demise and lease unto

the said Pennsylvania Railroad Company, party of the second part, its successors and assigns, all the property of said Cleveland and Pittsburgh Railroad, as in said lease particularly mentioned and set forth: and

Whereas, By the terms of Section Second, Article First, of said lease, the said Pennsylvania Railroad Company, party of the second part, agrees to provide and pay all installments of interest and all installments of sinking fund, which may become payable during said lease, by the party of the first part, upon Bonds issued, or owing, or that might be thereafter issued or owing, by the said party of the first part; and also all such sums of money as might be needed or required to redeem and pay the principal and interest of the Bonds as they mature, as in the said lease is particularly set forth: and

Whereas, It is the intention of, and meaning of, these presents to fully determine, set forth and declare the extent and amount of liability by said article incurred, to be paid and provided for by said party of the second part,

Therefore, It is hereby understood, and agreed by and between the said parties hereto, that the liabilities now existing are, and are only, as follows:

737 Second Mortgage Bonds, due September 1, 1873, now outstanding		\$511,500 00
Annual interest at seven per cent.	\$35,805 00	
Third Mortgage Bonds, due May 1, 1875		\$1,252,000 00
Interest at seven per cent.	\$87,640 00	
Fourth Mortgage Bonds, due January 1, 1892, now outstanding		\$1,096,000 00
Interest at 6 per cent.	\$65,760 00	
Consolidated Mortgage Bonds dated August 1, 1867, for \$5,000,000, due November 1, 1900, amount now outstanding		\$1,000,000 00
Interest at seven per cent.	\$70,000 00	

Sinking Fund for the last mentioned mortgage, based on \$25,000 per annum, with accruing interest on bonds retired by the Sinking Fund added each six months. There being now in said Sinking Fund \$124,000 00 in said Consolidated Bonds, due November 1, 1900.

The Trustee of the present General Mortgage for \$5,000,000 00 has on hand \$3,876,000 00, of the present Consolidated Bonds, by the sale of which (or so much thereof as may be required) to provide the means to redeem the present outstanding Second, Third and Fourth Mortgage Bonds, and the remainder of said General Mortgage Bonds, by the terms of the Mortgage, are

applicable, under the direction of the Company, to provide for construction and equipment of the Roads. There is also outstanding of Fractional Stock,	\$12,053 26
738 which is subject to conversion into the Capital Stock when presented in sums of \$50 each. There is also Scrip of Fourth Mortgage Bonds to the amount of.....	\$8,843 63

payable at the same date as the Bonds, to wit, January 1, 1892, with simple interest at six per cent.

Therefore the entire liabilities of the said party of the first part, which are assumed by said party of the second part, on the first day of December, A. D. 1871, for Interest and Sinking Fund accruing annually thereon, will be and are as follows:

Second Mortgage Bonds.....	\$35,805 00	
Third Mortgage Bonds.....	87,640 00	
Fourth Mortgage Bonds.....	65,760 00	
Consolidated Mortgage Bonds.....	70,000 00	
Sinking Fund.....	25,000 00	
Scrip Stock	1,205 33	
Scrip Fourth Mortgage Bonds.....	530 62	
		\$285,940 95
Interest on \$124,000 Bonds (at seven per cent.) now in Sinking Fund		8,680 00
To this liability add the Rental or Dividend to Shareholders		786,795 00
And also the present Government tax of 2½ per cent, on dividends		21,638 62
Also allowance for organization		10,000 00
Total liability		\$1,113,054 57

The said party of the first part hereby agrees to provide all amounts required to meet accruing interest, up to the first day of December, A. D. 1871.

It is hereby further understood, that the said party of the second part shall, as stipulated in said lease, be entitled to any abatement that may be made in taxes or interest upon Bonds, and in like manner as stipulated in said lease, the said party of the second part shall be responsible for any increase thereof; and it is hereby especially understood and agreed, that no Bonds, Stock or obligation, other than those recited and set forth in this agreement, shall be created or issued by the party of the first part, during the term of the said lease, without the sanction in writing of the said party of the second part, except that in the event of the suit of Otis and others against The Cleveland and Pittsburgh Railroad Company to recover about three hundred and fifteen thousand dollars, being the difference claimed between convertible bonds and stock, (which suit has been decided by the lower courts in favor of the Company, and is now on appeal to the superior courts,)

being finally decided against the Company, then and in that event the party of the second part agrees and does hereby authorize the appropriation by the Company of two hundred thousand dollars of its Consolidated Mortgage Bonds, now in the hands of the Trustees thereof, to be used by the Company in aiding it to pay said claim; and upon the issue of said Bonds for such purpose, the party of the second part shall assume and pay the interest on said Bonds, and provide for the principal thereof, in the same manner as is provided for the other Bonds of like character in said lease.

And as a consideration for the party of the second part assuming this contingent liability, which is not provided for in said lease, the party of the first part agrees, that all surplus assets that may remain in the hands of its Treasurer, after providing for the just debts and liabilities against the Company up to December 1st, 1871, including dividend on existing stock for the month of November, at the rate of ten per cent. per annum, clear of taxes, shall be held in reserve until the final decision of the said suit, and in the event of the same being finally decided in favor of the Company, all such surplus assets shall be deemed and taken to be the property of the party of the second part, and shall thereupon be paid over to the said party of the second part.

In witness whereof, the said parties to these presents have respectfully caused their common or corporate seals to be hereunto affixed, duly attested, this the day and year first before written.

THE CLEVELAND AND PITTSBURGH
RAILROAD COMPANY,

[L. s.] By J. N. McCULLOUGH, *President*,
Attest:

G. A. INGERSOLL, *Secretary*.

THE PENNSYLVANIA RAILROAD COM-
PANY,

[L. s.] By J. EDGAR THOMSON, *President*,
Attest:

JOS. LESLEY, *Secretary*.

Sealed and delivered in the presence of us,

JOS. LESLEY,
JNO. P. GREEN,
JNO. THOMAS,
J. W. REILLY,

740 Whereupon said defendants, The Cleveland & Pittsburgh Railroad Company and The Pennsylvania Company, offered in evidence the assignment of the above lease to the Pennsylvania Company, as follows, to-wit:

Assignment of the Lease of The Cleveland and Pittsburgh Railroad to The Pennsylvania Company by the Pennsylvania Railroad Company, Dated April 14, 1873.

Know all men by these presents: Whereas, The Cleveland and Pittsburgh Railroad Company, on the twenty-fifth day of October, one thousand eight hundred and seventy-one, made and executed to the Pennsylvania Railroad Company an indenture of lease of all their railroads, estate and property, rights, privileges and franchises, under and subject to the performance of certain covenants and to the payment of certain sums of money therein particularly mentioned;

And whereas, At a meeting of the board of directors of the Pennsylvania Railroad Company, held on the eighth day of November, A. D. one thousand eight hundred and seventy-one, it was, on motion,

Resolved, That the president of this Company be and he is hereby authorized for and on behalf of the Pennsylvania Railroad Company, to assign, transfer and set over unto the Pennsylvania Company the contract of lease, dated October twenty-fifth, one thousand eight hundred and seventy-one, with the Cleveland and Pittsburgh Railroad Company, for the road and property thereby leased and demised, upon the said Pennsylvania Company agreeing to carry out and perform all the duties and obligations, and to assume and pay all the liabilities which the Pennsylvania Railroad Company has agreed to do, by or under said contract of lease:

Now, know ye, That the Pennsylvania Railroad Company, for and in consideration of the sum of one dollar, to them paid by the said the Pennsylvania Company at the time of the execution hereof, and of the performance of the covenants hereinafter mentioned, have granted, assigned, transferred and set over, and by these presents do grant, assign transfer and set over unto the said the Pennsylvania **Company, their successors** and assigns, the said indenture of lease, made by and between the Cleveland and Pittsburgh Railroad Company and the Pennsylvania Railroad Company, and all and singular the railroads, ways, rights of way, depot grounds, docks, real estate, property, and all the main and side tracks, bridges, viaducts, culverts, fences, and other structures, and all the depots, station
741 houses, engine houses, car houses, freight houses, wood houses, and other buildings and all the machine shops and machinery, and the fixtures therein, and all the extensions, branches, tracks, locomotives, tenders, passenger, baggage, freight, and other cars, and all the other rolling stock and equipment, together with all rights, privileges and franchises in and by the said indenture of lease demised and conveyed, as therein particularly mentioned and set forth, as well as all the estate, right, title, interest, term of years, claim and demand whatsoever of the said the Pennsylvania Railroad Company, of, in and to the same, and to every part thereof. To have and to hold the said railroads and premises, with the appurtenances unto the said the Pennsylvania Company, their successors and assigns, for the residue of the term of nine hundred and ninety-nine

years, to be reckoned from the first day of December, in the year one thousand eight hundred and seventy-one, under and subject, nevertheless, to all the covenants in the said indenture of lease contained, and which, on the part of the said Pennsylvania Railroad Company, are to be kept and performed.

And the said the Pennsylvania Company, for themselves, their successors and assigns, do hereby covenant and agree with the said the Pennsylvania Railroad Company, their successors and assigns, that they shall and will, at all times hereafter during the residue of the said term, well and truly keep and perform all and singular the covenants and agreements in the said indenture of lease set forth and contained to be by the said the Pennsylvania Railroad Company kept and performed.

In witness whereof, the said parties hereto have caused their respective corporate seals to be hereunto affixed, and the same to be attested by the signatures of their respective presidents and secretaries, this fourteenth day of April, Anno Domini one thousand eight hundred and seventy-three (1873).

J. EDGAR THOMSON,
President Penna. R. R. Co.

Sealed and delivered in the presence of us:

WM. M. SPACKMAN,
HENRY C. SPACKMAN.

Attest:

[SEAL.] FLOYD H. WHITE,
Ass't Sec'y Penna. R. R. Co.

THOMAS A. SCOTT,
President Pennsylvania Company.

Attest:

[SEAL.] W. H. BARNES,
Secretary Pennsylvania Company.

HENRY C. SPACKMAN,
WM. M. SPACKMAN.

742 Recorded. Allegheny county, Pennsylvania, January 3, 1898, deed record 999, page 110; Beaver, November 8, 1895, articles record 14, page 408; Columbiana, December 7, 1897, lease record 6, page 16; Jefferson, December 16, 1897, agreement and lease record 1, page 62; Belmont, January 15, 1898, lease record 17, page 457; Carroll March 2, 1898, lease record 2, page 220; Stark, February 10, 1898, lease record 7, page 274; Mahoning, March 29, 1898, lease record, 7, page 15; Portage, January 29, 1898, lease record 4, page 262; Summit, March 16, 1898, volume 208, page 405; Tuscarawas, February 5, 1897, lease record 3, page 330; Cuyahoga, October 23, 1897; lease record 5, page 125.

Assignment by the Pennsylvania Railroad Company to the Pennsylvania Company of the Supplementary Agreement Between the Cleveland and Pittsburgh Railroad Company and the Pennsylvania Railroad Company, Dated May 31, 1875.

Know all men by these presents: Whereas, by instrument of writing, dated the fourteenth day of April, one thousand eight hundred and seventy-three, the Pennsylvania Railroad Company assigned and transferred to the Pennsylvania Company the lease from the Cleveland and Pittsburgh Railroad Company to the Pennsylvania Railroad Company, dated the twenty-fifth day of October, one thousand eight hundred and seventy-one, of the railroad, and real and personal estate and property of the Cleveland and Pittsburgh Railroad Company as therein described.

And whereas, The two last above named companies entered into a supplementary agreement, dated the thirtieth day of November, one thousand eight hundred and seventy-one, in respect to certain matters and things mentioned and contained in the above recited lease, and defining the extent and amount of liability of the Pennsylvania Railroad Company, in regard to certain payments to be made under the terms of said lease, which said supplementary agreement has not heretofore been assigned to the said the Pennsylvania Company, in accordance with the intention of said parties;

Now therefore, know ye, That the said the Pennsylvania Railroad Company, as well in consideration of the premises as of the sum of one dollar, to them paid by the said the Pennsylvania Company, at or before the sealing and delivery hereof, the receipt whereof is hereby acknowledged and of divers other good 743 and valuable consideration them thereto moving, have granted, assigned, transferred and set over, and by these presents do grant, assign, transfer and set over unto the said the Pennsylvania Company, their successors and assigns, the said above recited supplementary agreement made between the Cleveland and Pittsburgh Railroad Company and the Pennsylvania Railroad Company, and dated the thirtieth day of November, one thousand eight hundred and seventy-one, and all the clauses, covenants and conditions thereof, and all benefit and advantage to be derived therefrom; and all the right, title and interest of the said the Pennsylvania Railroad Company in and to the said agreement, and in and to all the money, dividends, interest, property and other matters and things that may be coming due or payable to the Pennsylvania Railroad Company, under and by virtue of the provisions of the said recited agreement.

And this grant and assignment is made upon and under and subject to the condition that the said the Pennsylvania Company, in accepting this grant and assignment, do assume and agree to pay all and singular the sums of money, and perform all the stipulations which the said the Pennsylvania Railroad Company have agreed or assumed to pay and perform in and by the said recited agreement, dated the thirtieth day of November, one thousand eight hundred

and seventy-one, in as full and ample a manner as though the payments to be made and stipulations to be performed were herein fully set forth, and as though the said the Pennsylvania Company had become parties to and executed these presents.

Witness, The corporate seal of the said the Pennsylvania Railroad Company and the signature of their vice-president, the thirty-first day of May A. D. one thousand eight hundred and seventy-five.

By order of the board of directors,

G. B. ROBERTS,
Vice-President.

Sealed and delivered in the presence of us:

JOS. LESLEY.

HENRY C. SPACKMAN.

Attest:

[SEAL.] JOS. LESLEY, *Secretary.*

Acknowledged by George B. Roberts, first vice-president, and Joseph Lesley, secretary, before Henry Phillips, Jr., commissioner for Ohio in Philadelphia, May 31, 1875, and by Joseph Lesley, secretary, before Henry C. Spackman, notary public, Philadelphia, May 31, 1875.

Whereupon the defendants rested.

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Rebuttal.

To rebut the evidence offered by the defendants, the plaintiff thereupon offered in evidence, from page 746 of the record referred to in the stipulation, the petition of H. Camp for rent of pier, a true copy whereof is as follows, to-wit:

"To the Hon. the City Council of the City of Cleveland:

"The undersigned is desirous of Leasing a small portion of the public ground near the Pier, for the purpose of a coal yard to supply those boats which find it inconvenient to make a landing, except at the Pier.

H. CAMP.

Cleveland, April 22, 1848.

Also the following from Journal E of Council Proceedings, page 6, under date of May 25, 1848:

"Resolved, that in the matter of the petition of H. Camp, that the prayer of said petition be granted, and that a lease be executed according to the terms and conditions therein stated, subject to the wants of the U. S. government or its agents."

Also Petition of H. Camp, as follows:

"To the City Council of the City of Cleveland:

"The undersigned Hezekiah Camp, represents that he is an occupant of a lot on Bath Street, facing the pier, and lying north of the

lots as numbered on the plat, for which, by the appraisement he is to pay \$5.50 cts. per foot front, being the same per foot as the other lots are valued per foot in front—while the other lots extend back 120 feet to Commercial Street in the rear, while your petitioner's lot extends only half that distance, and he is therefore prevented from having any access to his said lot in the rear. Your petitioner therefore prays that the lease to him of said lot, which is not yet executed may make his lot extend back the same distance as the other lots lying by its side, and making the part thereby added and covered in part by a blacksmith shop, subject to the uses of the government agents when wanted for building the pier, and subject also to said black-shop, being taken care of for the uses of the United States, whose property it is.

Cleveland, May 12th, 1848.

H. CAMP.

(Endorsed:) Petition of H. Camp for his Lot to extend back &c. on Bath St. Ref. to Com. on Public Gro. Prayer of Petition granted. May 25, 1848.

Plaintiff also offered Resolution under date of May 25, 1848, Journal E of Council Proceedings, page 6, a true copy of which is as follows, to-wit:

745 "Mr. Seymour offered the following, which was adopted: Resolved, that 12 feet of the lot fronting the pier adjoining and connecting with the United States government office, appropriated especially for government use, be leased to Daniel P. Rhodes for the present year, at the rate of \$5.00 per foot, subject to the wants of such government. That the use of said lot be limited to 80 feet in depth: provided the occupancy of so much of said lot does not injure or impair any of the improvements or property of the U. S. government or its right."

Plaintiff also offered the following, under date of April 10, 1849, from Journal E of Council Proceedings, page 129:

"Petition of D. P. Rhodes, asking lease of a few feet of ground between the government house and F. W. Gibbons' lot at the pier. Referred to Committee on Wharves and Public Grounds."

Also Petition of Daniel P. Rhodes, asking for a renewal of his lease, a true copy whereof is as follows, to-wit:

"To the Hon. Mayor & Common Council of the City of Cleveland:

Your Petitioner respectfully asks of your Honorable body, a renewal of his lease of the few feet between the Government House and the lot leased by Francis W. Gibbons for the term of three or five years.

DAN'L P. RHODES.

(Endorsed:) "Petition of Dan'l P. Rhodes asking a renewal of his lease. Ref. to Com. on Wharves & Public Grounds. April 10, 1849."

And further to rebut the evidence offered by the defendants, plaintiff offered the following from Journal C of the Council Proceedings, page 101, under date of August 4, 1841:

"Regular Meeting Aug. 4, 1841.

"Reports

"* * * Of the Committee consisting of Messrs. Hayan and Jas. S. Clarke, appointed July 6th, 1840, to procure a surveyor and ascertain the boundaries of all the streets and lanes fronting on the Cuyahoga River. Said report is signed by all the committee except Mr. Hayan, who dissents. Ordered on file."

Mr. LAWRENCE: I have not been able to find that report. We have searched the city clerk's office, and, if counsel desire, we can bring one of the clerks over to show that fact. I want to offer secondary evidence of the contents of that report—a statement made by Judge McLain in deciding the Holmes case, as reported in the *S American Law Register*, pages 720 and 721.

To which the defendants objected; which objection was sustained by the court; to which ruling of the court the plaintiff then and there excepted, and offered to prove the same as follows, to-wit: "In 1840, in pursuance of authority given by its charter, the City Council caused the exact boundaries and fronts of all the lanes and streets of the Cuyahoga River below Vineyard's lane to be surveyed and ascertained, of which survey a report was made August 4th, 1841; which was accepted, and thereby the City Council established the boundaries and fronts of said streets and lanes, according to said survey, which designated the entire territory between lot 191 and the lake as Bath street, and fixed its boundaries accordingly."

Mr. FOOTE: I wish at this time to retender, on behalf of the Lake Shore and the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, the Answer of Hezekiah Camp heretofore offered by Judge Sanders, and to offer the Answer of the Cleveland, Columbus & Cincinnati Railway Company, in the Price and Crawford case.

To which the plaintiff objected; which objection was sustained by the court; to which ruling of the court defendants, the Cleveland, Cincinnati, Chicago & St. Louis Railway Company and the Lake Shore Railway Company, then and there excepted, and offer to prove that said answer of said railway company was as follows, to-wit:

The separate answer of the Cleveland, Columbus & Cincinnati Rail Road Company to a Bill in Chancery Exhibited in the Court of Common Pleas of Cuyahoga County, Ohio, against said Company and others by Lemuel Crawford and William I. Price:

This respondent, saving all benefit of exceptions and for answer to so much and such parts of said Bill as respondent is advised that

it is material to answer, says, that it admits that the complainants are engaged in selling coal, and obtained a lease of a lot for a coal yard, as charged in said bill. She further admits that the complainants have occupied said lot as alleged, but as to the value of the improvements made on said lot by the complainants, or the extent of the business done, or contemplated to be done by them on the premises, this respondent has no knowledge, opinion or belief, and can neither admit nor deny the allegations respecting the same. Respondent further admits that Jabez W. Fitch was the officer duly appointed to receive the rents which accrued to the city of Cleveland under said lease until February 5th, 1850, when M. J. Williamson
747 was, by resolution of the City Council, appointed receiver in his place, but does not admit that said Fitch made an arrangement to receive said rents in any manner different from that required by the terms of the lease, being wholly ignorant whether such arrangement was or was not made by him. But this respondent insists that said Fitch had no authority to make such arrangement, and that if made as alleged in the Bill, it would have no legal effect except so far as payments were made to and received by him under it, and while his authority to receive payment continued. Respondent further answering denies that any payment of rent has been made on said lease since that which became payable by the terms of the leases on the first day of January, 1850, to-wit, the quarter accruing between Oct. 1st, 1849, and Jan. 1st, 1850, and which by the terms of the lease became payable on the 1st day of January, 1850. Respondent admits that the rent for that quarter was duly paid, but denies all knowledge of any payment having been made for any rent accruing since that payment.

Respondent, further answering, admits that William B. Lloyd and Hezekiah Camp commenced several suits in ejectment for the possession of the tract of land commonly called Bath Street, as charged in said Bill, one of which suits embraced lots 7 and 8 now claimed by the complainants, but were then held by D. Upson—and another of the suits embraced lot 6 then held by Michael Davis—that said Upson and Davis were duly and legally served with process in ejectment and thereby became to all legal intent parties to said suit.

Respondent also admits that the City of Cleveland did enter into the usual consent rule and undertake the defense of all said suits, and respondent believes that this undertaking was made in good faith, with the purpose of making the best possible defense in all the cases.

Respondent also admits that one of said suits (but not the one embracing the premises claimed by said complainants) was tried and a verdict and judgment rendered in favor of said Camp and Lloyd; that said suit was removed to the Supreme Court and reserved for decision by the Court in Bank, as alleged in said bill, but respondent denies that said cause is still depending in the Court in Bank or elsewhere for decision, but alleges that if the said suit is still open and undetermined on the journals of the court, it is so merely from an accidental omission of some of the parties or at

torneys to have the proper entry made disposing of said cause; and further alleges that said cause was long since settled in the manner hereinafter to be set forth, and should long since have been
 748 disposed of by a judgment confirming the judgment of the Court of Common Pleas in said cause.

Respondent admits the act incorporating this respondent, the object and power of the company as alleged and shown in this bill, but the respondent utterly denies any and all combinations between said company and said City of Cleveland and said Camp and Lloyd, or between said company and any other party or parties whatever for the purpose of defrauding said complainants or any other person or persons, either at the time alleged in said bill or at any other time, or for the purpose of interfering with any rights and privileges belonging to said complainants, or for the purpose of obtaining for itself any rights, interest or privileges in any manner inconsistent with fair, legal, equitable and honorable dealing.

Respondent admits it to be true that on the 8th day of August, 1849, a contract was made between this respondent of the one part, and the said Camp and Lloyd of the other part, which had relation to said Bath street property, including the premises claimed by said complainants, a copy of which said contract is annexed to the answer of said Camp in this cause and to which (to avoid repetition) this respondent begs leave to refer. That on the 13th of September, 1849, another contract was made by and between this respondent and the City of Cleveland, which last contract also had relation to said Bath street property, including the premises claimed by complainants, a copy of which is hereto annexed and made a part of this answer. But respondent alleges that each of these contracts was the result of a negotiation wholly unconnected with and independent of the other. That as far as respondent is informed and believes, there was no concert of concurrence between the said city and said Camp and Lloyd, but on the contrary that the relation between them was, during the whole time from the commencement of the suits above referred to — the times when both said contracts were consummated, entirely adversary—that the circumstances under which said contracts were negotiated and consummated were as follows, that is to say: That after the location of the railroad from Columbus to Cleveland, it became necessary, in the opinion of the directors, to obtain the whole of the tract of land, commonly called Bath street, and they made a formal appropriation of the same by resolution on the 18th of September, 1848, called Bath street, and upon examination it was found that the entire title of that tract was involved in a controversy between the City of Cleveland and said Camp and Lloyd. That suits were then depending for the possession of said premises; that one suit had already been decided
 749 against the city, was then depending in the Supreme Court of Ohio on exceptions to the judgment of the Court of Common Pleas. That the opinions, not only of the people generally but also of men professing to understand the legal questions involved in the controversy, differed so much as to the probable result that it was impossible to anticipate the event; that it was the in-

terest and wish of this respondent to keep clear of all controversies, whether legal or otherwise, and for that reason they were unwilling to resort to the power given by their charter to obtain property where the same could be obtained on reasonable terms by negotiation. There remained then no other way of obtaining the land necessary for the railroad tracks, passenger and freight houses, and the various other purposes connected with the termination of the road at Cleveland, than by a negotiation with each of the parties litigating the question of title. Upon these views alone, and for the purpose of obtaining the land required for their station on the best terms that could be obtained without litigation or controversy, this respondent commenced and carried on said negotiations and finally consummated each of said contracts, but it has in no instance been the purpose of this respondent to obtain any unfair or dishonest advantage of said complainants, or any other party having or claiming to have an interest in said premises or any portion of the same; nor has said railroad company, so far as respondent knows or believes, been guilty of any act of bad faith or any injustice towards any person or party interested in said premises or any part thereof.

Respondent admits it to be true that by the terms of the contract between the City of Cleveland and said company, made on the 13th of September, 1849, as aforesaid, said company took the interest of said city in the said Bath street property, subject to all the rights and privileges of all other persons which could be legally enforced against the property had the city continued to hold the same, and also assumed all the legal liabilities to other persons which rested on the city in relation to said property up to that time, but this respondent utterly denies that the city or said company, or its assigns in the premises, was, or ever could become liable to the complainants or other lessees of said premises on account of any failure of title in the city.

And this respondent further answering says, that said city in the leases now held or claimed by the complainants, as well as in all other leases granted by her in Bath street, guarded herself in the strictest manner against any implied liability to guarantee the possession of the lots leased, and provided that an eviction of
750 the lessees should merely stop rent, but that said city should not be liable to pay any damages.

Respondent further answering, admits it to be true that judgment was rendered in the Court of Common Pleas in favor of said Camp and Lloyd in the suit embracing the premises claimed by the complainants in pursuance of the agreement made by this respondent with said Camp and Lloyd on the 8th day of August A. D. 1849, as aforesaid, not because the control of the suit was given to said company as alleged in the bill, but because said company, having succeeded to the rights of the city as aforesaid, and having by said agreement with said Camp and Lloyd compromised all matters in controversy, ceased to make a further defense to said suit and permitted judgment to be entered. And this respondent insists that said compromise was a fair and reasonable one, and such as said

company was fully justified in making; that there was nothing in the relation which had previously existed between the said city and the complainants which required the City, while holding its original interest against said company after the contract of the 13th of September, 1849, to persist in maintaining a series of doubtful and expensive law suits, when a reasonable compromise of the same could be made. Respondent further insists that in making the said compromise, the railroad company obtained from said Camp and Lloyd the best terms which they could be induced to grant, and so far as those terms secured to this respondent the rights which said city had previously claimed, it is conceded that it will furnish to the various lessees a full protection against the adverse claims of said Camp and Lloyd, and protect them in their several leases so far as they themselves have performed their covenants in the same. But respondent shows to the court that by the terms of said compromise they failed to obtain any interest in or control over any part or portion of the premises claimed by the complainants, except a small part in the rear of lots 6 and 7. And this respondent disclaims any interest in or control over the residue of the lots claimed by said complainants, and they utterly deny the right of the complainants to seek protection or indemnity of this respondent.

Respondent further answering says, that it is not true, so far as is known to this respondent, that the complainants, or either of them, or any person on their behalf, ever paid or tendered to said Fitch or to said Williamson, or any other person, whether authorized to receive it or not, the quarter rent which was by the terms of the lease due and payable on the 1st day of January, 1850,

751 or that any tender was made of any rent on the 1st day of April, 1850, although it is admitted that some time after the first day of April, and after said lease was forfeited, a tender was made of some portion, but not of the whole of the rent which had become due. But this respondent is informed and believes that the tender was made after the respondent, by its board of directors, had resolved that no more rent should be received on the leases, which respondent claims were all forfeited at the time said resolution was passed.

And now having fully answered said bill, this respondent prays to be discharged herein with costs.

C. STETSON,
Sol'r for Respondent.

In testimony of the truth of all the allegations contained in the foregoing answer, the Respondent has caused this instrument to be signed by the Vice President, countersigned by the Secretary and sealed with the corporate seal of said railroad company this 13th day of January, A. D. 1851.

JNO. M. WOOLSEY,
Vice President.

M. I. WILLIAMSON, *Secretary.* [SEAL.]

STATE OF OHIO,

Cuyahoga County, ss:

Personally came before me a notary public for said county the above named Jno. M. Woolsey and made oath that the allegations contained in the foregoing answer in Chancery, so far as they relate to matters within his personal knowledge, are true, and all others therein contained he believes to be true.

JNO. M. WOOLSEY.

Subscribed and sworn to before me this 18th day of January, 1851.

R. C. PARSONS,
Notary Public.

THE STATE OF OHIO,

Cuyahoga County, ss:

I, Alfred Kelly, of lawful age, being duly sworn, on my said oath do depose and say, that I was and still am the President of the Cleveland, Columbus & Cincinnati Railroad Company, and as such President conducted the negotiations of the settlement between the said Camp and Lloyd, and said Railroad Company, and between the said Railroad Company and said City of Cleveland, referred to in the foregoing answer of said Railroad Company, and that there was not in the said settlement with said Camp and Lloyd or with said City any design on the part of said Railroad Company or any one acting in its behalf to cheat or defraud the said complainants or either of them, nor was there any intention on the part of said City and said Camp and Lloyd, or any or either of them, or any person acting on their or either of their behalf, to cheat or defraud said complainants or either of them to the knowledge, information or belief of this affiant.

ALFRED KELLEY.

Sworn to and subscribed this 11th day of March A. D. 1851, before me.

JOHN RANKINE, Jr.,
Notary Public.

(Attached to the foregoing answer is a copy of the contract of September 13, 1849, between the City and the C., C. & C. R. R. Co., heretofore set out in this bill of exceptions at page 406.)

And further to rebut the evidence offered by the defendants, plaintiff offered in evidence, from the record referred to in the stipulation, the testimony of OTTO DERUM, as follows:

By Mr. LAWRENCE:

Q. I will ask you if you have made a plat showing the Bath street property with the shore line marked thereon as indicated on the map made in 1851, introduced by the railroad company?

A. Yes, sir.

Q. I will show you this map marked "Plaintiff's Exhibit No. 63," and ask you if that is the map?

A. That is the map I made.

Q. Explain how you marked that shore line in 1851, upon that map?

A. I had a blue print entitled "Cleveland, 1851."

Q. Was it the map that was given to you here in court, last Friday?

A. Yes, sir; last Friday; from that map I reproduced the shore line as shown on that blue print, and put it on this map.

Mr. LAWRENCE: I suppose there is no question here that that blue print is a copy of the map put in evidence by the Lake Shore Railroad Company, so far as the shore line is concerned?

Mr. CLARKE: No, I will admit it; I know it is a true copy.

The COURT: It is conceded in open court that the blue print is a correct copy, as far as the shore line is concerned.

Q. I will withdraw all the questions I have asked about the shore line. I will ask you if you have platted upon that map, Exhibit No. 63, the property described in the deed from Daniel P. Rhodes and others, to the Cleveland & Pittsburgh Railroad Company?

A. Yes, sir.

Q. Explain to the jury the location of that land and the manner in which you have platted it upon that map, plaintiff's Exhibit 63?

A. The south line of that deed—I haven't put on the figures; the scale is all right—the south line of that deed runs parallel with the southerly line of Bath street and is 282 feet northerly therefrom. Is that right—282? You compare it with the deed, I only outlined it here.

Q. Here is the deed, if you want to refer to it (handing witness deed.)

A. And bounded as follows: Beginning at a point on the water's edge of the east pier of Cleveland harbor, 282 feet northerly of the south line of Bath street, measuring with said water's edge of said pier, the bearing of which is north, thirty degrees west, thence north sixty-six degrees east parallel with the south line of Bath street, 300 feet to the periphery of a circle the radius of which is 650 feet, convexing towards the Cuyahoga River, thence along the periphery of said circle to a point 150 feet north sixty-six degrees east of the water's edge of said pier, thence southwesterly on a line parallel with said south line of said Bath street, 150 feet to the water's edge of said pier, and then southerly along the water's edge of said pier 250 feet to the place of beginning. The outlines of that deed are shown by the green lines here (indicating.) Here is the radius point, 650 feet (indicating.)

Q. Is it marked so as to indicate it?

A. The radius point is marked and the scale is given on the map.

Q. Have you marked the Rhodes tract so as to indicate what it is?

A. Yes, sir; it says "Rhodes to C. & P. Road, Cuyahoga County Record, Volume 64, page —."

Q. And did you also plat upon that map the land described in

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the quit claim deed, from Hezekiah Camp and wife to the Cleveland & Pittsburgh Railroad Company, recorded in Volume 64, page 520?

A. Yes, sir.

Q. Now, explain to the jury the location of that land?

A. That deed commences at a point in the westerly line of Water street 550 feet north of the south line of Bath street, thence at right angles to said westerly line of Water street to the center line of Spring street, thence along said—I guess then the deed says—

Q. Here is the deed (handing witness deed.)

A. The land between the west line—all that piece or parcel of land covered by water, bounded as follows: Southerly from a point on the west line of Water street produced, 550 feet from 754 the south line of Bath street, to the center line of Spring street, produced, and at right angles with the lines of said streets, northwesterly by Lake Erie, extending into the same indefinitely between the westerly line of Water street produced, and the center line of Spring street produced, by the westerly line of Water street, and westerly by the center line of Spring street produced.

Q. Now, explain your map so that the jury will understand where the parcel is located, and how you have indicated it upon the map?

A. The south line as indicated on that map, is a green line, extending from the westerly line of Water street to the center line of Spring street produced, and the point where it starts at right angles to the west line of Water street, is 550 feet north of the south line of Bath street, measuring on the westerly line of Water street; it is included between the west line of Water street, the center line of Spring street produced shown with the green line, and on the south line by a green line, and it is marked "Camp to C. & P. Road, Cuyahoga County Records, Volume 64, page 520."

Q. Have you marked any north line?

A. No.

Q. Why not?

A. The north line to which I ran it—I didn't mark it according to that deed; I ran it to the harbor line, established by the United States Government.

Q. Have you marked on your map the lands described in the deed from Harriet L. and Thomas S. Harbach and others, to the Cleveland & Pittsburgh Railroad Company, recorded in Volume 64, page 525?

A. I didn't mark that on.

Q. Explain to the jury what would be the location of that line?

A. The location of the south line of that would be a line drawn parallel to the south line of Bath street, and one hundred feet distant therefrom, and includes all the land lying between the west line of Water street, and the east line of the Cuyahoga river—the pier—and going out indefinitely into the lake.

Mr. CLARKE: That covers all the land that is in controversy in this case, does it?

Mr. LAWRENCE: It includes all the land north of the line a hundred feet from the south line of Bath street.

Mr. SANDERS: Have you any objections to Mr. Dercum indicating that, by some kind of a line, on the map?

Mr. LAWRENCE: No; it don't need a line, when it includes everything north of the hundred foot line.

755 Judge SANDERS: Will you Mr. Dercum, indicate upon that map, the lines of the land included under the Harbach deed?

The WITNESS: Yes, sir; I will.

Q. Now, please take this original map, which Mr. Clarke has produced, and indicate where the shore line is located, in accordance with it?

(Witness does as requested.)

Q. I will ask you if you have marked on that map, Plaintiff's Exhibit No. 63, the shore line as shown on the map offered in evidence by the defendants and marked as defendants' Exhibit No. 13?

A. Yes, sir.

Q. You have indicated it on your map in what way?

A. It is a blue line, shaded towards the north—it is a faint blue color, and I put on "Shore line of Lake Erie, A. D. 1851, according to the Railroad Map."

Q. Have you shown on that map of yours the tracks testified to by Mr. Ford, and marked "B" and "C" on this Exhibit "No. 6"?

A. Yes, sir.

Q. Have you marked those on the map?

A. I marked them in a red color, and with the letters "B" and "C" on top of it, the same as on that map.

Q. On the map, Plaintiff's Exhibit No. 6?

A. Yes, sir.

Q. As I understand it the track shaded blue, lying next west of the track "B," is a track of the Pennsylvania Company?

A. Yes, sir; I took it from Mr. Ford's testimony.

Q. And the track marked "C" is the first track west of the center line of Spring street?

A. Yes, sir.

Q. Have you prepared a description in words of the territory, on all the land included between the track next west of track "B" and the center line of Spring street?

A. Yes, sir.

Q. You may give that description?

A. Commencing—I haven't got it in writing, but I can read it from the map; I put everything on the map, and I can read it right from the map. Commencing at a point in the production of the center line of Spring street, 370 feet northerly, at right angles from the south line of Bath street; thence north thirty-four west, about 1105 feet, to the waters of Lake Erie; thence south about fifty-five, nineteen west, to a line drawn midway between the track—supposed to be the track of the Lake Shore—

Q. Marked "B" on Exhibit No. 6?

756 A. To the track marked "B" on Exhibit No. 6, and the track next westerly thereto; thence south thirty degrees and forty-five minutes to the east, midway between said two men-

tioned tracks, about 500 feet; thence southeasterly on a curve drawn with a radius of 256 feet and keeping midway between said tracks, about 173 and one-half feet, measuring on said curve; thence south 69, thirty-five, east, midway between said tracks, 340 feet.

Q. What do you mean by "said tracks?"

A. Between said mentioned tracks; that is, the track marked "B" and the track next westerly therefrom, where we come to the waters of Lake Erie.

Q. Have you come to your starting place?

A. Not yet.

Q. Proceed then?

A. Thence northeasterly midway between said tracks on a curve drawn with a radius of 426 feet, until it strikes a line parallel to the south line of Bath street, and 370 feet northerly therefrom; thence north sixty-six to the east, about 375 feet, to the place of beginning.

Q. Can't you give that description in terms that will be—that would give the courses and distances without reference to the tracks?

A. I could, by leaving out the words "between said tracks—it would be the same.

Q. Can you give a description that will be complete, without reference to the tracks of the railroad?

A. Yes.

Q. Then do that, by courses and distances?

A. Am I to repeat the whole thing from the beginning?

Q. Yes; you had better?

A. Commencing in the production of the center line of Spring street at a point 370 feet northerly, at right angles from the south line of Bath street, thence north, thirty-four west, 1105 feet, to the waters of Lake Erie; thence south, fifty-nine, nineteen west, 675 feet, thence south, thirty, forty-five east, 500 feet; thence on a curve drawn with radius of 256 feet, $173\frac{1}{2}$ feet, thence south, sixty-nine, thirty-five, east, 340 feet, thence on a curve drawn with a radius of 426 feet, about 120 feet, until it intersects a line which is drawn parallel to the south line of Bath street and 2,370 feet northerly distant therefrom; thence north, sixty-six east, about 375 feet, to the place of beginning.

Cross-examination of OTTO DERGUM.

By Mr. CLARKE:

Q. How far is the southerly line of this tract which you have just described, from the line drawn parallel to the south line of Bath street and 132 feet from it?

A. Which tract do you mean?

Q. The most southerly line of this tract which you have just given the minute description of—how far is the most southerly point of that north of the line drawn parallel with the south line of Bath street and 132 feet north of it?

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A. 238 feet.

By Judge SANDERS:

Q. Have you in your possession the deed of Harbach and others to the C. & P. Company?

A. Here it is.

Q. Will you be good enough to plat that property on your map Plaintiff's Exhibit "No. 63?"

A. Yes, sir. Shall I do it now?

Q. At any time, when you can get at it. Indicate on that map the property, just as you have the deed from Camp?

A. All right, I will do so.

Whereupon the plaintiff offered in evidence the map above referred to and identified as "Plaintiff's Exhibit No. 63," and same is hereto attached and made a part hereof.

Whereupon the defendants offered in evidence the map heretofore referred to as "Defendant's Exhibit 13."

It is agreed by counsel for the plaintiff that said map "Defendants' Exhibit 13," has been examined by the City Engineer and is found to be a correct and accurate copy of the Map of 1851, which was introduced in evidence and marked Defendants' Exhibit 13. Said Map Defendants' Exhibit 13 is hereto attached and made a part hereof.

Whereupon the plaintiff rested.

The foregoing with exhibits attached, was all the evidence given by either party on the trial of the cause.

And thereafter, upon the 8th day of May, 1909, the court, after consideration, found in favor of the plaintiff, as appears by the record herein. And the said defendants thereafter duly filed their respective motions for a new trial, which are a part of the record herein, for the reasons and upon the grounds in said motions stated.

And thereafter, at the April Term, 1909, and upon the 8th day of May, 1909, said motions were overruled by the court and judgment entered upon said finding as also appears of record, to which ruling of the court the defendants then and there duly and severally excepted.

And thereupon, on the 12th day of June, 1909, being within forty days after the overruling of said motions for a new trial, the said defendants duly filed with the Clerk of said court this their bill of exceptions, and prayed that the same be allowed and signed by the Trial Judge and made a part of the record herein, but not spread upon the journal.

758 Receipt of which is hereby acknowledged this 12th day of June, 1909.

CHARLES P. SALEN, *Clerk*,
By H. L. NICHOLAS, *Dep. Clerk*.

And thereupon, notice of the filing of this bill of exceptions was duly served upon N. D. Baker, attorney for the plaintiff, by the Clerk, this 15th day of June, 1909.

And thereupon, on the 26th day of June, 1909, being not less than ten days after such notice of the filing of this bill, and within five days after the expiration of such ten days, this bill of exceptions was duly transmitted to said Trial Judge by the Clerk of said court, together with all objections and amendments filed thereto, the receipt of which is hereby acknowledged this 26th day of June, 1909.

WILLIS VICKERY,
Trial Judge.

And now, upon the 26th day of June, 1909, being within five days after receipt of said bill of exceptions from said Clerk, and upon due consideration of the same and the objections and amendments thereto, this bill of exceptions is hereby allowed and signed by the court, and it is ordered that the same be transmitted to the office of the Clerk of this court forthwith, and that the same be made a part of the record herein but not spread upon the journal.

WILLIS VICKERY,
Trial Judge.

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Supreme Court of Ohio.

THE CLEVELAND & PITTSBURGH R. R. Co. et al., Plaintiffs in Error,
vs.

THE CITY OF CLEVELAND et al., Defendants in Error.

Return of Writ.

UNITED STATES OF AMERICA,
Supreme Court of Ohio, ss:

In obedience to the commands of the within writ, I hereunto transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within case, together with all things concerning the same.

In witness whereof, I have hereunto subscribed my name and affixed the seal of the said Court at my office in Columbus, Ohio, this 3d day of January, A. D. 1913.

[Seal of the Supreme Court of the State of Ohio.]

FRANK E. McKEAN,
Clerk of Supreme Court of Ohio.

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In the Supreme Court of Ohio.

No. 12461.

THE CLEVELAND & PITTSBURGH RAILROAD COMPANY and THE
PENNSYLVANIA COMPANY, Plaintiffs in Error,

vs.

THE CITY OF CLEVELAND, THE CLEVELAND, CINCINNATI, CHICAGO
& St. Louis Railway Company and The Lake Shore & Michigan
Southern Railway Company, Defendants in Error.

*Petition for Writ of Error, Assignment of Errors, and Prayer for
Reversal.*

Considering themselves aggrieved by the final decision of the Supreme Court of Ohio in rendering judgment against them in the above entitled case, Plaintiffs in Error, The Cleveland & Pittsburgh Railroad Company and the Pennsylvania Company, and Cross-Petitioners in Error, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company and The Lake Shore & Michigan Southern Railway Company, they having been Cross-Petitioners in Error and not merely Defendants in Error, hereby pray a writ of error from said decision and judgment to the United States Supreme Court and an order fixing the amount of a supersedeas bond.

And the said The Cleveland & Pittsburgh Railroad Company, Pennsylvania Company, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company and The Lake Shore & Michigan Southern Railway Company assign the following errors in the records and proceedings of the said case:

One of the sources of title set up by the railroad companies above named as a defense to the claims of the City of Cleveland was a contract dated September 13th, 1849, between the City of Cleveland and The Cleveland, Columbus & Cincinnati Railroad Company, under which all of said railroads derived rights which constitute a complete defense to the claims of the City of Cleveland. Said contract of September 13th, 1849 was made, as alleged and claimed by said railroads, under authority of an Act of the Ohio Legislature passed on February 11th, 1848, the same being found in Vol. 46, Ohio Laws, Page 40. Subsequent to the making of said contract

761 of September 13th, 1849 (in reliance upon the authority given by said Railroad Act of 1848,) there was passed by the Legislature of Ohio in 1852 another act dealing with the same general subject matter, to-wit: contracts between municipalities and railroad companies as to the occupancy of streets and public grounds. Said Act of 1852 is found in 50 Ohio Laws, Page 274.

Subsequent to the making of and in reliance upon said contract of September 13th, 1849, made pursuant to said Legislative Act passed February 11th, 1848, said railroad companies expended upwards of \$1,000,000.00 in permanent improvements and betterments upon the property covered by said contract.

The Supreme Court of Ohio by its judgment in the present case gave such effect to said legislative enactment of 1852 as to impair, by such subsequent legislation, the obligation of said contract of September 13th, 1849, above mentioned, and held that said contract was unenforceable and not a defense to this action, although, as will appear from the final entry in said case, it was specially set up and claimed by said railroad companies that such a decision would impair the rights of said railroads under said contract and constitute a violation of the 10th section of Article 1 of the Constitution of the United States.

For which errors The Cleveland & Pittsburgh Railroad Company, Pennsylvania Company, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company and The Lake Shore & Michigan Southern Railway Company pray that said judgment of the Supreme Court of the State of Ohio, dated October 22d, 1912, be reversed and a judgment rendered in their favor, and for costs.

WM. B. SANDERS, &
SQUIRE, SANDERS, & DEMPSEY,

*Attorneys for The Cleveland & Pittsburgh Railroad
Company and The Pennsylvania Company.*

F. B. MCGOWAN,
EDWARD A. FOOTE &
COOK, MCGOWAN & FOOTE,

*Attorneys for The Cleveland, Cincinnati, Chicago &
St. Louis Railway Company and The Lake Shore &
Michigan Southern Railway Company.*

762 STATE OF OHIO,
Supreme Court, ss:

Let the writ of error issue upon the execution of a bond by The Cleveland & Pittsburgh Railroad Company, Pennsylvania Company, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company and The Lake Shore & Michigan Southern Railway Company to the City of Cleveland, in the sum of \$5,000.00; such bond when approved to act as a supersedeas.

Dated December 23, 1912.

WILLIAM Z. DAVIS,
Chief Justice Supreme Court of Ohio.

763 [Endorsed:] No. 12,461. The Cleveland & Pittsburgh Railroad Company and the Pennsylvania Company, Plaintiffs in Error, vs. The City of Cleveland, The Cleveland, Chicago, & St. Louis Railway Company and The Lake Shore & Michigan Southern Railway Company, Defendants in Error. Petition for writ of error, assignment of errors, and prayer for reversal. Filed Dec. 23 1912 Supreme Court of Ohio. Frank E. McKean, Clerk. Squire, Saunders & Dempsey, Cleveland.

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*Writ of Error.*THE UNITED STATES OF AMERICA, *vs.*

The President of the United States of America to the Honorable Judges of the Supreme Court of the State of Ohio, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Ohio before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between The Cleveland & Pittsburgh Railroad Company and the Pennsylvania Company, Plaintiffs in Error, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company and the Lake Shore & Michigan Southern Railway Company, Cross-Petitioners in Error, and the City of Cleveland, Defendant in Error, the same being case No. 12,461 upon the dockets of the Supreme Court of Ohio, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said state, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said The Cleveland & Pittsburgh Railroad Company, Pennsylvania Company, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company and The Lake Shore & Michigan Southern Railway Company, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in their behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the 23rd day of December, A. D. 1912.

[Seal United States District Court, Southern Dist. Ohio.]

B. E. DILLEY,

*Clerk of the United States District Court,
Southern District of Ohio.*

Allowed, December 23rd, 1912.

WILLIAM Z. DAVIS,
Chief Justice Supreme Court of Ohio.

766 [Endorsed:] Filed Dec. 23 1912 Supreme Court of Ohio.
Frank E. McKean, Clerk.

767 *Citation.*

UNITED STATES OF AMERICA, ss:

The President of the United States to the City of Cleveland, a municipal corporation duly organized under the laws of the State of Ohio, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C. thirty (30) days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Ohio, wherein The Cleveland & Pittsburg Railroad Company and the Pennsylvania Company are Plaintiffs in Error, and The Cleveland, Cincinnati, Chicago & St. Louis Railway Company and The Lake Shore & Michigan Southern Railway Company are Cross-Petitioners in Error, and wherein the City of Cleveland is Defendant in Error, the same being Cause No. 12461 upon the dockets of said court, to show cause, if any there be, why the judgment rendered against the said The Cleveland & Pittsburg Railroad Company, Pennsylvania Company, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company and The Lake Shore & Michigan Railway Company, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Chief Justice of the Supreme Court of the State of Ohio, this 23rd day of December, A. D. 1912.

WILLIAM Z. DAVIS,
Chief Justice Supreme Court of Ohio.

Attest:

[Seal the Supreme Court of the State of Ohio.]

SEBA H. MILLER,
Deputy Clerk Supreme Court of Ohio.

768 [Endorsed:] Filed Dec. 23, 1912. Supreme Court of Ohio. Frank E. McKean, Clerk.

769

In the Supreme Court of Ohio.

No. 12461.

THE CLEVELAND & PITTSBURGH RAILROAD COMPANY and THE
PENNSYLVANIA COMPANY, Plaintiffs in Error,

vs.

THE CITY OF CLEVELAND, THE CLEVELAND, CINCINNATI, CHICAGO &
St. Louis Railway Company, and The Lake Shore & Michigan
Southern Railway Company, Defendants in Error.*Appointment of Deputies to Serve Citation.*

I hereby authorize and depute Edward A. Foote or Thomas M. Kirby, of Cleveland, Ohio, to make service of the citation issued in this case upon Defendant in Error, The City of Cleveland, and to make due return thereon.

WILLIAM Z. DAVIS,

Chief Justice Supreme Court of Ohio.

Dated December 23rd, 1912.

770 [Endorsed:] Filed Dec. 23, 1912. Supreme Court of
Ohio. Frank E. McKean, Clerk.771 *Return of Service of Citation By Thomas M. Kirby, Special
Deputy.*

STATE OF OHIO.

Cuyahoga County, ss:

Thomas M. Kirby, of lawful age, being first duly sworn on oath, deposes and says:

I was duly authorized and deputized by Hon. Wm. Z. Davis, Chief Justice of the Supreme Court of Ohio, to serve upon the defendant in error, the City of Cleveland, the citation hereto attached. I served the same by delivering personally to Newton D. Baker, Mayor of the City of Cleveland, defendant in error, a true and certified copy of said citation with all endorsements thereon, at Cleveland, Ohio, on the 24th day of December, A. D. 1912, at 11.30 o'clock A. M.

THOS. M. KIRBY.

Sworn to and subscribed before me this 24 day of December A. D. 1912.

[Notarial Seal, Cuyahoga County, Ohio.]

DONALD McBRIDE,

*Notary Public.*772 [Endorsed:] Affidavit of Service of Citation. Filed Dec.
26, 1912. Supreme Court of Ohio. Frank E. McKean,
Clerk.

In the Supreme Court of Ohio.

No. 12461.

THE CLEVELAND & PITTSBURG RAILROAD COMPANY and THE
PENNSYLVANIA COMPANY, Plaintiffs in Error,

vs.

THE CITY OF CLEVELAND, THE CLEVELAND, CINCINNATI, CHICAGO &
St. Louis Railway Company, and The Lake Shore & Michigan
Southern Railway Company, Defendants in Error.

*Bond on Writ of Error from the Supreme Court of the United
States to the Supreme Court of the State of Ohio.*

Know all men by these presents, That we, The Cleveland & Pittsburg Railroad Company, a corporation of the State of Ohio, Pennsylvania Company, a corporation of the State of Pennsylvania, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, a corporation of the State of Ohio, The Lake Shore & Michigan Southern Railway Company, a corporation of the State of Ohio, as principals, and the American Surety Company of New York, a corporation of the State of New York, as surety for said The Cleveland & Pittsburg Railroad Company and said Pennsylvania Company, and the National Surety Company, a corporation of the State of New York, as surety for said The Cleveland, Cincinnati, Chicago & St. Louis Railway Company and said The Lake Shore & Michigan Southern Railway Company, are held and firmly bound unto the City of Cleveland, a municipal corporation organized under the laws of the State of Ohio, in the sum of \$5,000.00, to be paid to the said obligee, its successors, representatives and assigns; to the payment of which well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, by these presents.

Witness the execution hereof, this 23rd day of December, A. D. 1912.

Whereas, the above named principals have prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of Ohio,

774 Now, therefore, the condition of this obligation is such,

That if the above named principals shall prosecute their said writ of error to effect and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

THE CLEVELAND & PITTSBURG RAIL-
ROAD COMPANY AND THE PENNSYLVANIA COMPANY,

By SQUIRE, SANDERS & DEMPSEY,

Their Attorneys.

Signed in the presence of—

SEBA H. MILLER.

E. A. FOOTE.

AMERICAN SURETY COMPANY OF
NEW YORK,

By ARTHUR D. MURPHY, *Res. Vice Pres.*

["Seal of American Surety Co. of N. Y."]

Attest:

PHIL S. BRADFORD, *Res. Vice Pres.*

SEBA H. MILLER.

THOS. M. KIRBY.

THE CLEVELAND, CINCINNATI, CHI-
CAGO & ST. LOUIS RAILWAY COM-
PANY AND THE LAKE SHORE & MICH-
IGAN SOUTHERN RAILWAY COM-
PANY,

By COOK, MCGOWAN & FOOTE,

Their Attorneys.

SEBA H. MILLER.

THOS. M. KIRBY.

["Seal Nat'l Surety Co."]

NATIONAL SURETY COMPANY,

By JAMES W. CARROLL, *Its Attorney in Fact.*

THOS. M. KIRBY.

ARTHUR D. MURPHY.

THE STATE OF OHIO,

Franklin County, ss:

On this 23rd day of December, A. D. 1912, before me personally appeared Thomas M. Kirby, who, being by me duly sworn, deposes and says that he is associated with the firm of Squire, Sanders & Dempsey, Attorneys for The Cleveland & Pittsburg Railroad Company and the Pennsylvania Company, and that the execution of the foregoing bond on behalf of said companies, in the manner above set forth, has been fully authorized by said companies.

THOMAS M. KIRBY.

Sworn to, acknowledged before me, and subscribed in my presence, this 23rd day of December, A. D. 1912.

["Seal Supreme Court of Ohio."]

SEBA H. MILLER,

Deputy Clerk Supreme Court of Ohio.

775 THE STATE OF OHIO,
Franklin County, ss:

On this 23rd day of December, A. D. 1912, before me personally came Arthur D. Murphy, known to me to be the Resident Vice Pres. of the American Surety Company of New York, the corporation described in and which executed the annexed bond of The Cleveland & Pittsburg Railroad Company and the Pennsylvania Company as surety thereon, and who, being by me duly sworn, deposes and says that he resides in the City of Columbus, State of Ohio; that he is Res. Vice Pres't of said American Surety Company of New York and knows the corporate seal thereof; that said company is duly and legally incorporated under the laws of the State of New York; that said company has complied with the provisions of the Act of Congress of August 13th, 1894, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond is the corporate seal of said American Surety Company of New York and was thereto annexed by order and authority of the Board of Directors of said company; that he signed his name thereto by like order and authority as Res. Vice Pres't for said company, and that the assets of said company, unencumbered and liable to execution, exceed its claims, debts and liabilities whatsoever by more than the sum of \$5,000.

ARTHUR D. MURPHY.

Sworn to before me and subscribed in my presence, this 23rd day of December, A. D. 1912.

["Seal of Supreme Court of Ohio."]

SEBA H. MILLER,
Deputy Clerk Supreme Court of Ohio.

THE STATE OF OHIO,
Franklin County, ss:

On this 23rd day of December, A. D. 1912, before me personally appeared Edward A. Foote, who, being by me duly sworn, deposes and says that he is a member of the firm of Cook, McGowan & Foote, Attorneys for The Cleveland, Cincinnati, Chicago & St. Louis Railway Company and The Lake Shore & Michigan Southern Railway Company, and that the execution of the foregoing bond on behalf of said companies, in the manner above set forth, has been fully authorized by said companies.

EDWARD A. FOOTE.

Sworn to, acknowledged before me, and subscribed in my presence, this 23rd day of December, A. D. 1912.

["Seal of Supreme Court of Ohio."]

SEBA H. MILLER,
Deputy Clerk Supreme Court of Ohio.

776 THE STATE OF OHIO,
Franklin County, ss:

On this 23 day of December, A. D. 1912, before me personally came Jas. W. Carroll (name illegible), known to me to be the attorney in fact of the National Surety Company, the corporation described in and which executed the annexed bond of The Cleveland, Cincinnati, Chicago & St. Louis Railway Company and The Lake Shore & Michigan Southern Railway Company as surety thereon, and who, being by me duly sworn, deposes and says that he resides in the City of Columbus, State of Ohio; that he is the attorney in fact of said National Surety Company and knows the corporate seal thereof; that said company is duly and legally incorporated under the laws of the State of New York; that said company has complied with the provisions of the Act of Congress of August 13th, 1894, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond is the corporate seal of said National Surety Company and was thereunto annexed by order and authority of the Board of Directors of said company; that he signed his name thereto by like order and authority as attorney in fact for said company, and that the assets of said company, unencumbered and liable to execution, exceed its claims, debts, and liabilities whatsoever by more than the sum of \$1,000,000.

JAMES W. CARROLL.

Sworn to before me and subscribed in my presence, this 23rd day of December, A. D. 1912.

["Seal Supreme Court of Ohio."]

SEBA H. MILLER,
Deputy Clerk Supreme Court of Ohio.

Bond approved, and to operate as a supersedeas.

WILLIAM Z. DAVIS,
Chief Justice Supreme Court of Ohio.

Dated December 23rd, 1912.

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Supreme Court of Ohio.

No. 12461.

THE CLEVELAND & PITTSBURGH RAILROAD COMPANY and THE
PENNSYLVANIA COMPANY, Plaintiffs in Error,

vs.

THE CITY OF CLEVELAND, THE CLEVELAND, CINCINNATI, CHICAGO &
St. Louis Railway Company, and The Lake Shore & Michigan
Southern Railway Company, Defendants in Error.

Error to the Circuit Court, Cuyahoga County.

Docket Entries.

1910.

- May 2. Petition in Error and Waiver of Summons filed.
- " " Cross-Petition in Error of The C. C. C. & St. L. Ry. Co.
and Waiver of Summons filed.
- " " Cross-Petition in Error of The L. S. & M. S. Ry. Co. and
Waiver of Summons filed.
- " " Motion by Pl'tff to dispense with printing maps and blue
prints, and Notice filed.
- " " Circuit Court Transcript, Original Papers and Bill of Ex-
ceptions filed.
- May 10, 1910. Motion by plaintiffs to dispense with printing maps
and blue prints—Allowed by consent. J. 24-18.
- May 13. Printed Record (2 Vols.) filed; 5/16/10 & 5/24/10—
Proof of Service filed.
- " 25. Printer's Bill filed.
- " 31. Request for oral argument filed by Cook, McGowan &
Foote, and Squire, Sanders & Dempsey.
- Sept. 7. Motion by Pl'tffs for extension of time to file plaintiff's
brief to Jan. 1, 1911; defendants' brief to Mar. 1, 1911
Reply Brief to Apr. 1, 1911, and Stipulation filed.
- October 4, 1910. Motion by plaintiffs for extension of time to file
briefs—Allowed by consent. J. 24-133.

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1910.

- Dec. 17. Motion by Pl'tffs to extend time to file brief to Feb. 1,
1911; def't's to Apr. 1, 1911 and Reply Brief to May 1,
1911, and stipulation filed.
- December 22, 1910. Motion by Pl'tff to extend time to file briefs to
Feb. 1, 1911, etc., Allowed by consent. J. 24-271.
- Dec. 24. Printed Brief of The C. C. C. & St. L. Ry. Co. and The
L. S. & M. S. Ry. Co. and Appendix thereto, together
with Proof of Service, filed.

1911.

- Jan. 30. Pl'tffs' Printed Brief and Proof of Service filed.
- " " Printed Appendix to Pl'tffs' Brief and Proof of Service
filed.

- Mar. 7. Motion by Def't, The City of Cleveland, to extend time to file brief to May 1, 1911 and to June 1, 1911 for Reply Brief, and Consent, filed.
- March 14, 1911. Motion by defendant, The City of Cleveland, to extend time to file brief to May 1, 1911, etc. Allowed by Consent. J. 24-386.
- Apr. 25. Def't's Printed Brief filed.
- May 5. Motion by Pl'tffs and cross-petitioners to extend time to Aug. 1, 1911, to file Reply Brief, and Stipulation filed.
- May 16, 1911. Motion by pl'tffs and cross-petitioners to extend time to file Reply Brief to Aug. 1, 1911, Allowed. J. 25-52.
- July 17. Motion by Pl'tff and cross-petitioners in error for extension of time to Sept. 15, 1911 to file Reply Brief & stipulation, filed.
- Sept. 14. Reply Brief by Plaintiff and Cross-Petitioners, and Proof of service filed.
- October 3, 1911. Motion for extension of time to file Reply Brief to Sept. 15, 1911. Allowed. J. 25-122.
- Oct. 13. Motion by Def't to advance & for Oral Argument, and Notice filed.
- October 24, 1911. Motion to advance—Allowed. J. 25-150.

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1912.

- Jan. 31. Additional Points & Authorities for oral argument filed by plaintiffs and cross-petitioners.
- October 22, 1912. Judgment Affirmed. J.-25-479.
- Oct. 29. Mandate Issued.
- " " Original Papers sent to Clerk.
- Dec. 23. Petition for Writ of Error, Assignment of Errors, and Prayer for Reversal, filed.
- " " Bond on Writ of Error filed. (\$5,000.00, American Surety Co. of N. Y. and National Surety Co., Sureties.)
- " " Writ of Error filed.
- " " Citation filed.
- " " Appointment of deputies (Edward A. Foote and Thomas M. Kirby of Cleveland, Ohio.) to serve citation filed.
- " 26. Return of service of citation by Thomas M. Kirby, Special Deputy, filed, being as follows:

"STATE OF OHIO,

Cuyahoga County, ss:

Thomas M. Kirby, of lawful age, being first duly sworn on oath, deposes and says I was duly authorized and deputed by Hon. Wm. Z. Davis, Chief Justice of the Supreme Court of Ohio, to serve the defendant in error, The City of Cleveland, the citation hereto attached. I served the same by delivering personally to Newton D. Baker Mayor of the City of Cleveland, defendant in error, a true and certified copy of said citation with all endorsements thereon, at

Cleveland, Ohio, on the 24th day of December, A. D. 1912, at 11.30 o'clock A. M.

THOMAS M. KIRBY.

Sworn to and subscribed before me this 24th day of December, A. D. 1912.

[NOTARIAL SEAL.]

DONALD McBRIDE,
Notary Public."

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Journal Entries.

Tuesday, May 10th, 1910.

Motion No. 6846. Motion by plaintiffs to dispense with printing maps and blue prints in cause No. 12461 on the General Docket.—"Ordered by the Court that said motion be and the same is hereby allowed by consent." Journal 24, page 18.

Tuesday, October 4th, 1910.

Motion No. 6931. Motion by plaintiff- for extension of time to file briefs in Cause No. 12461 on the General Docket. "Ordered by the Court that said motion be and the same is hereby allowed by consent." Journal No. 24, page 133.

Thursday, December 22nd, 1910.

Motion No. 7075. Motion by plaintiff- to extend time to file brief to Feb. 1st, 1911, in Cause No. 12461 on the General Docket.—"It is ordered by the Court that this motion be and the same hereby is allowed by consent." Journal 24, page 271.

Tuesday, March 14th, 1911.

Motion No. 7170. Motion by Defendant (City of Cleveland) to extend time to file brief to May 1, 1911 in No. 12461 on the General Docket.—"It is ordered by the Court that this motion be and the same hereby is allowed by consent." Journal 24, page 386.

Tuesday, May 16, 1911.

Motion No. 7219. Motion by plaintiffs and cross-petitioners to extend time to file Reply Brief to August 1, 1911, in Cause No. 12461 on the General Docket.—"It is ordered by the Court that this motion be and the same is hereby allowed." Journal 25, page 52.

Tuesday, October 3, 1911.

Motion No. 7290. Motion by plaintiffs and cross-petitioners for extension of time to Sept. 15, 1911, to file Reply Brief in Cause No. 12461 on the General Docket.—“It is ordered by the Court that this motion be and the same is hereby allowed by consent.” Journal 25, page 122.

Tuesday, Oct. 24, 1911.

Motion No. 7338. Motion by defendant to advance. “It is ordered by the Court that this motion be and the same is hereby allowed. Request for Oral Argument noted.” Journal No. 25—Page 150.

Tuesday, October 22nd, 1912.

Judgment affirmed. Entry: “This cause came on to be heard upon the petition in error, cross-petition in error and transcript of 781 the record of the Circuit Court of Cuyahoga County, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said Circuit Court be, and the same is hereby, affirmed. To which judgment of affirmance the plaintiffs in error, The Cleveland & Pittsburgh Railroad Company and Pennsylvania Company, and the defendants and cross-petitioners in error, The Lake Shore & Michigan Southern Railway Company and The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, except.

And the Court finds that the plaintiffs in error, The Cleveland and Pittsburgh Railroad Company and Pennsylvania Company, and the defendants and cross-petitioners in error, The Lake Shore & Michigan Southern Railway Company and The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, made claim herein that the contract dated Sept. 13th, 1849, between the City of Cleveland and The Cleveland, Columbus and Cincinnati Railway Company, and appearing in the pleadings and record herein, was a legal, valid instrument, by which the City of Cleveland effectually parted with the right of title to and possession of said property, in dispute in this action; and that the claim of the City herein, sustained by the judgment of the Circuit Court and herein affirmed, was in contravention of the rights of said defendants under said contract of 1849, and impaired the rights of the defendants under said contract, in violation of the Constitution of the United States, particularly the 10th section of Article 1 thereof; which said claims fully appear in the pleadings and record herein, and that such claims so made by the said plaintiffs in error and said defendants and cross-petitioners in error, and so specially set up, were considered by the Court and decided adversely to said plaintiffs in error and said defendants and cross-petitioners in error.

And it appearing to the Court that there were reasonable grounds for this proceeding in error, it is ordered that no penalty be assessed

herein. It is further ordered that the defendant- in error recover from the plaintiffs in error their costs herein expended, taxed at \$—.

782 Ordered, That a special Mandate be sent to the Court of Common Pleas of Cuyahoga County to carry this judgment into execution.

Ordered, That a copy of this entry be certified to the Clerk of the Circuit Court of Cuyahoga County, 'for entry.' "

783 In the Supreme Court of Ohio.

No. 12461.

THE CLEVELAND & PITTSBURGH RAILROAD COMPANY and THE
PENNSYLVANIA COMPANY, Plaintiffs in Error,

VS.

THE CITY OF CLEVELAND, THE CLEVELAND, CINCINNATI, CHICAGO &
St. Louis Railway Company, and The Lake Shore & Michigan
Southern Railway Company, Defendants in Error.

Authentication of Record.

THE STATE OF OHIO,
City of Columbus, ss:

I, Frank E. McKean, Clerk of the Supreme Court of the State of Ohio do hereby certify that the foregoing petition for writ of error, assignment of errors, and prayer for reversal, order allowing writ, writ of error, citation, appointment of deputies to serve citation, and return of service thereof, are the original papers filed in this Court in the above entitled cause; that the copy of Bond and affidavits as to the sureties, attached thereto, are true and correct copies of the original bond and affidavits filed in said cause; that the printed copy of the Record attached hereto (consisting of two Volumes) is a true and correct copy of the Printed Record filed in said Supreme Court and used in the consideration of said cause; that the foregoing transcript of docket and journal entries is truly taken and correctly copied from the records of said Court; and that no opinion was rendered by the Court in said cause.

In witness whereof, I have hereunto subscribed my name and affixed the Seal of said Supreme Court of Ohio, this 3d day of January, A. D. 1913.

[Seal of the Supreme Court of the State of Ohio.]

FRANK E. McKEAN,
Clerk of the Supreme Court of Ohio.

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Supreme Court of Ohio.

THE CLEVELAND & PITTSBURGH R. R. Co. et al., Plaintiffs in Error,
vs.
THE CITY OF CLEVELAND et al., Defendants in Error.

Certificate of Lodgment.

THE STATE OF OHIO,
City of Columbus, ss:

I, Frank E. McKean, Clerk of said Court, do hereby certify that there was lodged with me as said Clerk, on December 23rd, 1912, in the above cause the following papers:

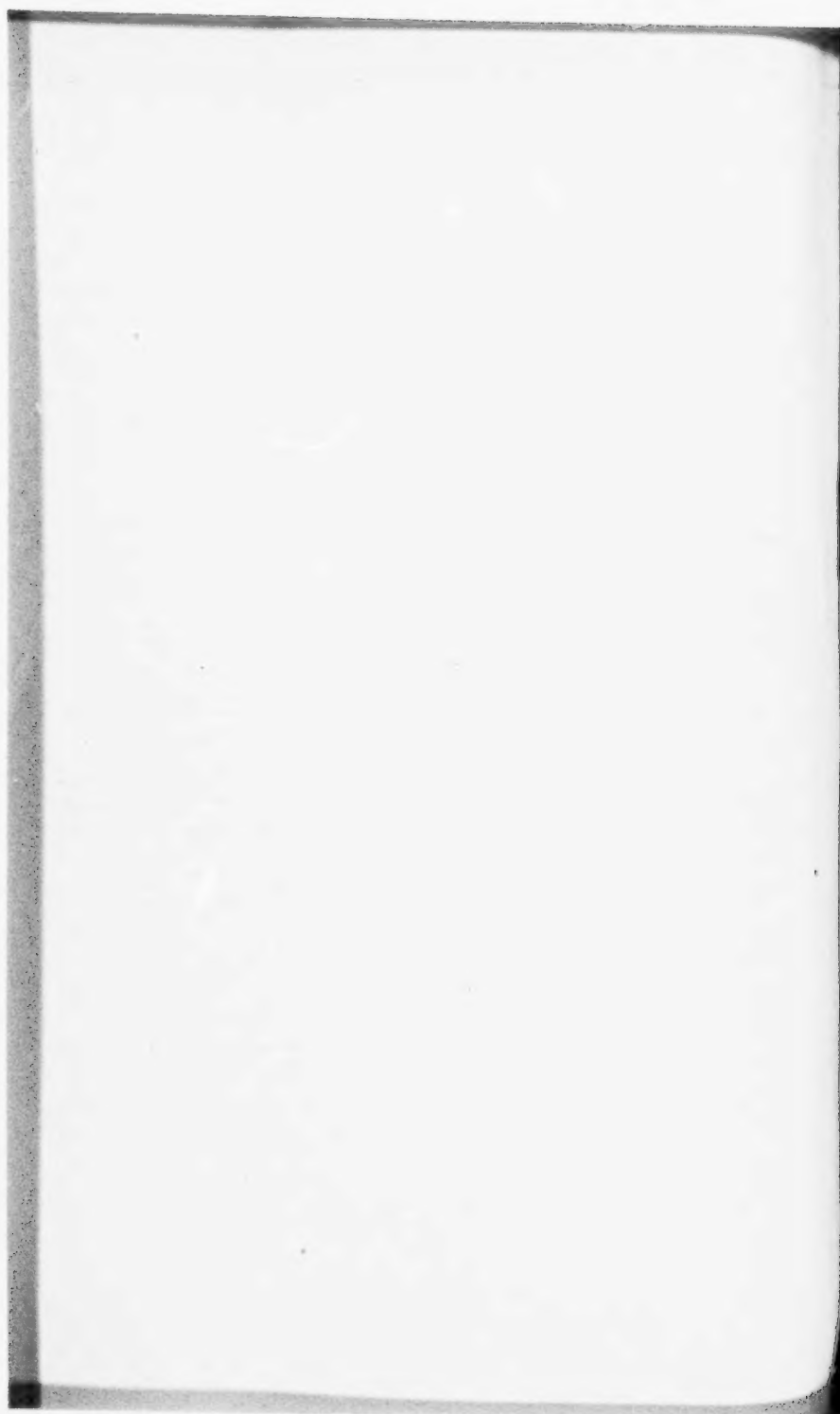
1. The original bond of which a copy is herein set forth.
2. One copy of Petition for writ of error.
3. Two copies of the writ of Error as herein set forth, one for defendant in error, The City of Cleveland, and one for my office.
4. One copy of Citation.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said Court at my office in Columbus, Ohio, this 3d day of January A. D. 1913.

[Seal of the Supreme Court of the State of Ohio.]

FRANK E. McKEAN,
Clerk of the Supreme Court of Ohio.

Endorsed on cover: File No. 23,497. Ohio Supreme Court. Term No. 422. The Cleveland and Pittsburg Railroad Company, Pennsylvania Company, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, & The Lake Shore and Michigan Southern Railway Company, plaintiffs in error, vs. The City of Cleveland, Ohio. Filed January 13th, 1913. File No. 23,497.



12
No. 95.

Office Supreme Court,

FILED

SEP 30 1914

HUGHES D. MAHONEY

CLERK

In the Supreme Court of the United States

October Term, 1913.

Error to the Supreme Court of the State of Ohio.

— o —

THE CLEVELAND AND PITTSBURG RAILROAD
COMPANY, PENNSYLVANIA COMPANY, THE
CLEVELAND, CINCINNATI, CHICAGO AND ST.
LOUIS RAILWAY COMPANY, and THE LAKE
SHORE AND MICHIGAN SOUTHERN RAILWAY
COMPANY,

Plaintiffs in Error,

vs.

THE CITY OF CLEVELAND, OHIO,
Defendant in Error.

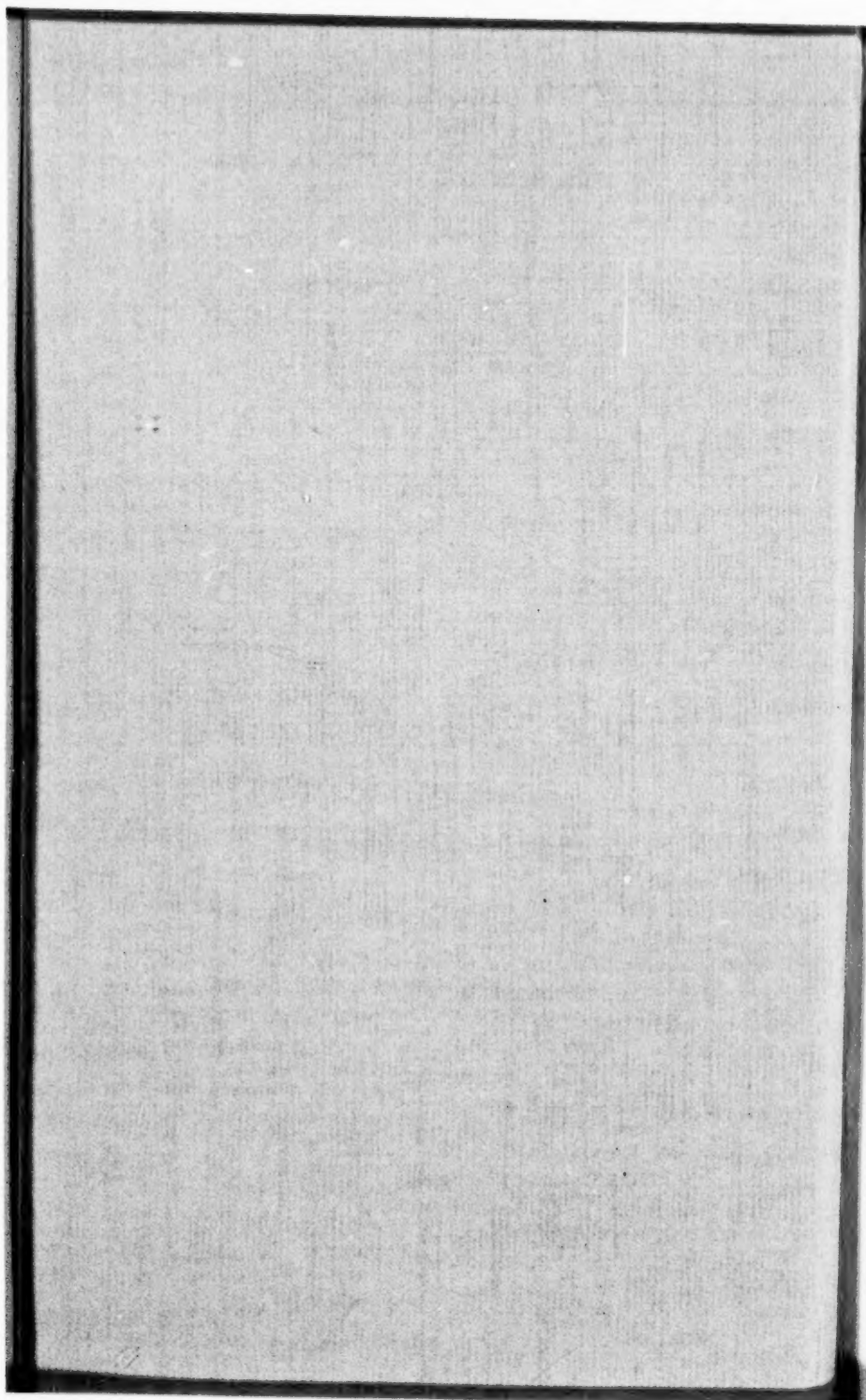
— o —

**MOTION TO DISMISS WRIT OF ERROR OR TO
AFFIRM, NOTICE OF MOTIONS AND BRIEF.**

— o —

NEWTON D. BAKER,
Attorney of Record for The City of Cleveland,
Defendant in Error.

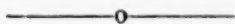
JOHN N. STOCKWELL,
City Solicitor of the City of Cleveland, and
ARTHUR F. YOUNG, Ass't City Solicitor,
Of Counsel.



No. 422.

In the Supreme Court of the United States

October Term, 1913.



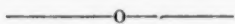
THE CLEVELAND AND PITTSBURG RAILROAD
COMPANY, PENNSYLVANIA COMPANY, THE
CLEVELAND, CINCINNATI, CHICAGO AND ST.
LOUIS RAILWAY COMPANY, and THE LAKE
SHORE AND MICHIGAN SOUTHERN RAILWAY
COMPANY,

Plaintiffs in Error,

vs.

THE CITY OF CLEVELAND, OHIO,

Defendant in Error.



MOTION TO DISMISS WRIT OF ERROR OR TO AFFIRM.

Now comes the City of Cleveland, Ohio, defendant in error, by its attorney of record herein, and moves this Honorable Court:

1. To dismiss the writ of error herein on the ground that this Court has no jurisdiction thereof, no federal question being involved therein.

2. To affirm the judgment and decision of the Supreme Court of the State of Ohio, on the ground that it is manifest that this writ of error was taken for delay only, and that the questions on which the decision of this cause depend are so frivolous as not to need further argument.

NEWTON D. BAKER,

Cleveland, Ohio, Attorney of Record for
The City of Cleveland, Defendant in Error.

In the Supreme Court of the United States

October Term, 1913.

THE CLEVELAND AND PITTSBURG RAILROAD
COMPANY, PENNSYLVANIA COMPANY, THE
CLEVELAND, CINCINNATI, CHICAGO AND ST.
LOUIS RAILWAY COMPANY, and THE LAKE
SHORE AND MICHIGAN SOUTHERN RAILWAY
COMPANY,

Plaintiffs in Error,

vs.

THE CITY OF CLEVELAND, OHIO,
Defendant in Error.

NOTICE OF MOTIONS.

To The Cleveland and Pittsburg Railroad Company,
Plaintiff in Error,

You are hereby notified that The City of Cleveland,
Ohio, Defendant in Error in the above entitled cause,
will on Tuesday, the 13th day of October, 1914, on the
meeting of the Supreme Court of the United States, on
that day, or as soon thereafter as counsel can be heard,
submit for the consideration of said Court the forego-
ing motions, and each of them, and the brief in support
thereof, hereto attached, all of which are now served
upon you herewith.

NEWTON D. BAKER, Cleveland, Ohio,
Attorney of Record for the City of
Cleveland, Ohio, Defendant in Error.

JOHN N. STOCKWELL,
City Solicitor of the City of Cleveland, and
ARTHUR F. YOUNG, Ass't Solicitor, Of Counsel.

No. 422.

In the Supreme Court of the United States

October Term, 1913.

THE CLEVELAND AND PITTSBURG RAILROAD
COMPANY, PENNSYLVANIA COMPANY, THE
CLEVELAND, CINCINNATI, CHICAGO AND ST.
LOUIS RAILWAY COMPANY, and THE LAKE
SHORE AND MICHIGAN SOUTHERN RAILWAY
COMPANY,

Plaintiffs in Error,

vs.

THE CITY OF CLEVELAND, OHIO,
Defendant in Error.

BRIEF.

This is a motion to dismiss the writ of error or to affirm. It should be granted for the following reasons:

1. The federal question relied upon here is not the federal question presented to the state courts in which this action originated.

2. Both the federal question alleged and relied upon below and the one alleged here are frivolously taken.

For the exposition of these grounds some statement of facts is necessary.

STATEMENT OF FACTS.

This action was brought in the year 1893 in the Court of Common Pleas of Cuyahoga County, Ohio. It was thereafter removed by affidavits of local prejudice to the Federal Circuit Court, in which, and in the Circuit Court

of Appeals of the United States, it was pending for many years. Following a decision of this court as to the insufficiency of local prejudice as a ground for removal when one of the parties defendant was a resident of the same state as the plaintiff the case was remanded to the state courts. It was then tried in the Common Pleas Court of Cuyahoga County, retried in the State Circuit Court, and finally the judgment of the State Circuit Court was affirmed by the Supreme Court of Ohio. This writ of error is, therefore, to the highest tribunal of the State of Ohio, and the jurisdiction of this Court is by virtue of Section 237 of the Judicial Code, formerly Section 709 of the Revised Statutes of the United States. When a case for decision here arises upon a writ of error to the highest tribunal of the state rather than originally in the federal courts, the jurisdiction of this Court to review the proceedings is not that of a general reviewing court, but is limited to the specific instances of alleged denial of federal right. This Court has held that it has no power on a writ of error to the State Supreme Court to determine any other than federal questions, and has limited its jurisdiction in review to three classes of cases.

1. Where the validity of a treaty or statute or of an authority exercised under the United States is drawn in question and the decision is against their validity.

2. Where the validity of a statute of a state or an authority exercised under any such statute is drawn in question on the ground of alleged repugnancy to the constitution, treaties, or laws of the United States and the decision is in favor of their validity.

3. Where any title, right, privilege, or immunity is claimed under the constitution of the United States or any treaty or statute of or any commission held or

authority exercised under the United States and the decision is against the same.

Questions decided by the state court, the solution of which depends upon state laws, are not reviewable in any one of the three classes of cases above cited. We cite for convenience only a few of the leading decisions of this Court establishing the contentions here submitted:

Waters-Pierce Oil Co. vs. Texas, 212 U. S., 86.

Western Union Telegraph Co. vs. Wilson, 213 U. S., 52.

Eustis vs. Bowles, 150 U. S., 361.

Sayward vs. Denny, 158 U. S., 180.

Capital Bank vs. Cadiz Bank, 172 U. S., 425.

Vandalia Railroad Co. vs. Indiana, 207 U. S., 359.

Out of this voluminous record only those facts are here recited which relate to the alleged federal questions presented by the plaintiffs in error.

In 1848 the Legislature of Ohio enacted a law known as "The Railroad Act", 46 Ohio Laws, 40, and being an act to regulate the railroads of the state and to define their powers. Section 11 of that act (Appendix, p. 1) alone has any bearing upon the issues in this litigation. That part of Section 11 which is pertinent reads as follows:

"If it shall be necessary, in the location of any part of any railroad, to occupy any road, street, alley or public way or ground of any kind, or any part thereof, it shall be competent for the municipal or other corporation or public officers or public authority owning or having charge thereof, and the railroad company, to agree upon the manner and upon the terms and conditions upon which the same may be used or occupied. * * *"

In 1852 the Railroad Act of 1848 was amended in some of its provisions and re-enacted. The part of Section 11 granting authority to municipal corporations to

agree with railroads as to the occupancy of streets quoted above Appendix, page 1.) remained unchanged. On the 13th day of September, 1849, the City of Cleveland, and The Cleveland, Cincinnati, Chicago and St. Louis R. R. Co. entered into an agreement for the use and occupation of Bath Street, a littoral piece of ground adjacent to the waters of the Cuyahoga River on its western boundary and of Lake Erie on its northern boundary, a public highway in the City of Cleveland. The contract is found in full in the record, page 285. By its terms this contract purported to grant to The Cleveland, Cincinnati, Chicago and St. Louis R. R. Co. and through it to other railroad companies, the right to the full and perpetual use and occupancy of the part of Bath Street in question for the purpose specified **"as fully and absolutely as said city or the constituted authorities thereof have the power or legal authority to do,"** and further **"it being expressly understood that the city does not guarantee nor warrant either the title or the right to occupy the same."** The issues in this case centered about the interpretation of this contract, and hence of the Railroad Act of 1848, which was conceded to be the source of any power the city had to make it. On the part of the City it was contended that the contract granted to the railroads only the right to the use and occupancy of Bath Street so far as it did not disturb the public use; that whatever larger interpretation might be put upon the language of the contract itself there was a defect of power on the part of the City to make any larger grant. The railroads on the other hand contended that by the contract the City had parted with all of its interest and that of the public in the street and that all use by the public was excluded; the authority so to contract being conferred by the Act of 1848.

The pleadings of the plaintiffs in error admit that prior to 1877 there was no judicial construction or interpretation of the Act of 1848 or of the rights and powers granted thereby. The claim of the railroads is that in that year in *Little Miami R. R. vs. the Commissioners*, 31 O. S., 338, and again in 1881 in *Railroad Company vs. Carthage*, 36 O. S., 631, and *State ex rel. vs. Railroad Company*, 37 O. S., 157, the Supreme Court of Ohio held that the Act of 1848 did authorize cities to grant away the exclusive right to the use of streets to the railroad companies. We shall hereafter show that as a matter of fact no such interpretation was ever made.

The plaintiffs in error admit, however, that in 1895 and thereafter in the cases of the *Railroad Company vs. Defiance*, 52 O. S., 262; *Zanesville vs. Fannan*, 53 O. S., 605; *The Railroad Company vs. Elyria*, 69 O. S., 414, and *Railway Co. vs. City*, 76 O. S., 481, the Supreme Court of Ohio did interpret the Act of 1848 and held that no such authority was granted by that act to cities to contract away the possession of streets which are held in trust for the public. The cases last cited admittedly hold that cities cannot grant away the use and occupation of streets to the permanent exclusion of the public and that there never was a statute in Ohio dealing with the power of cities to contract with railroad companies which went further than to authorize cities to grant rights of occupation to railroad companies consistent with the continued public use of the streets for street purposes. That this was the true interpretation of the Act of 1848 seems obvious from the language of reservation contained in the contract of 1849 by which the city undertook to grant only "as fully and absolutely as said city or the constituted authorities thereof have the legal power or author-

ity to do," and expressly declined to warrant either the right of the city to license exclusive occupation or to convey title.

The city brought this action in the nature of ejectment to oust the railroad companies from the exclusive possession of Bath Street, setting up its title. The railroads defended upon many grounds—among them abandonment, estoppel, want of a good dedication, and the statute of limitations, but placed their principal reliance upon the contract of 1849, which they claimed to be in the nature of a deed to the property by which the city had parted with all of its rights therein.

Variance in the Federal Question.

In the state courts the plaintiffs in error alleged as a federal question a change in decision in the interpretation of the Act of 1848, and that was the only supposed federal question submitted to the state courts. In this court, for the first time, the plaintiffs in error seek to raise a federal question growing out of the re-enactment of the railroad act of 1848 in the year 1852. In order that this variance may be obvious we quote the statement of the federal question from the pleadings below and from the citation of errors here.

From the amendment to the separate amended answer of The Cleveland, Cincinnati, Chicago and St. Louis R. R. Co., Record, pages 54-56, we quote the following:

"This defendant says that the contract of Sept. 13th, 1849, was authorized by the express language of said Railroad Act of 1848; that by common consent of municipalities and railroad companies throughout the State of Ohio said act was practically construed as giving full power and authority to make such a contract. That as hereinbefore set forth the

court of last resort in the State of Ohio as early as 1877 construed such act as giving such right and power and as sustaining the validity of said contract of Sept. 13th, 1849. That upon the strength of such practical construction and such judicial construction this defendant and the other defendants herein have expended large sums of money as hereinbefore set forth. That if it be true as contended by the City of Cleveland that subsequent decisions of the courts of the State of Ohio have changed the construction of said statute such rulings and decisions cannot be given retroactive effect so as to render invalid said contract of Sept. 13th, 1849, and defendant says that to give them the effect herein contended for by the City of Cleveland would be to imperil the contract right of this defendant in violation of the constitution of the United States, and particularly the 10th section of Article 1 thereof."

The averment of the federal question by the Lake Shore and Michigan Southern Ry. Co. is in identical language, Record, page 60.

In other words the Federal question presented and relied on in the state courts was a change in the decision of the Supreme Court of Ohio. The federal question here sought to be presented is stated in the petition for writ of error, assignment of errors, and prayer for reversal filed in this court. See Record, page 667. The pertinent portion reads as follows:

"One of the sources of title set up by the railroad companies above named as a defense to the claims of the City of Cleveland was a contract dated Sept. 13th, 1849, between the City of Cleveland and The Cleveland, Columbus & Cincinnati Railroad Co., under which all of said railroads derived rights which constitute a complete defense to the claims of the City of Cleveland. Said contract of Sept. 13th, 1849 was made as alleged, and claimed by said railroads, under authority of an Act of the Ohio Legislature passed on February 11th, 1848, the same being

found in Vol. 46, Ohio Laws, page 40. Subsequent to the making of said contract of Sept. 13th, 1849 (in reliance upon the authority given by said Railroad Act of 1848) there was passed by the Legislature of Ohio in 1852 another act dealing with the same general subject matter, to-wit: contracts between municipalities and railroad companies as to the occupancy of streets and public grounds. Said Act of 1852 is found in 50 Ohio Laws, page 274.

Subsequent to the making of and in reliance upon said contract of Sept. 13th, 1849, made pursuant to said Legislative Act passed Feb. 11th, 1848, said railroad companies expended upwards of \$1,000,000.00 in permanent improvements and betterments upon the property covered by said contract.

The Supreme Court of Ohio by its judgment in the present case gave such effect to said legislative enactment of 1852 as to impair, by such subsequent legislation, the obligation of said contract of Sept. 13th, 1849, above mentioned, and held that said contract was unenforceable and not a defense to this action, although as will appear from the final entry in said case, it was specially set up and claimed by said railroad companies that such a decision would impair the rights of said railroads under said contract and constitute a violation of the 10th section of Article 1 of the Constitution of the United States."

In other words this is a claim that some obligation of the contract of 1849 has been impaired by the Act of 1852 of the Ohio Legislature amending the act of 1848 and is an entirely different question from the one presented by the record to the court below. It is furthermore a question which the courts of Ohio had no opportunity to examine and upon which they have made no decision. (See Opinion, Appendix, page 5.)

Proceeding however on the assumption that in one or another form this alleged federal question may be re-

garded as lurking in the record we beg leave to submit that from either point of view the question is frivolous and that the writ of error is taken for purposes of delay and not in reliance upon a real question arising under the constitution of the United States by reason of any action by either the Legislature or the Supreme Court of the state of Ohio.

The Alleged Federal Question.

The plaintiffs in error allege that they have a federal question in this record because by virtue of the holding of the Supreme Court of Ohio such a change took place in its interpretation of the railroad acts as to impair the obligations of the contract made by the predecessors in interest of the plaintiffs in error as to impair its obligations. It should be understood at the outset that the City has never contended that the contract of 1849 was invalid. Our contention is not that the railroads have no rights in Bath Street under the contract of 1849 but that the rights are limited by the authority which the city had to grant and that as it had no authority to grant an exclusive occupation the interpretation of the contract must of necessity be so restrained as to give the railroad companies such rights only as were within the power of the City, and further that any grant of a right to the railroads must operate merely as a revocable license in view of the fact that the city's title to the street and its right to deal with it are subject at all times to the trust for the public use impressed upon the property at the time of its dedication to the public.

This is exactly what the courts of Ohio said in deciding the case—that is, the contract was not held invalid, nor its obligation in any sense impaired, but it was

simply interpreted in the light of existing law and held that its terms did not warrant the claim of the railroad. **Possession was, therefore, awarded to the city subject to all contract rights of the railroads, whatever they should finally be determined to be.** (Record, p. 11.)

The state court, as to the alleged federal question, said that there never had been any change of decision, but intimated that if there had been, that could not constitute an impairment of contract obligation. As we shall hereafter show, the decision rested on independent grounds aside from this contention of the railroads.

No Federal Question Presented by the Assignment of Errors.

The alleged federal question is found in the assignment of errors, page 667 of the record, in the third and fourth paragraphs thereof, and is cited supra:

The act of the Ohio legislature of February 11, 1848, found in Volume 46, Ohio Laws 40, by which the contract in question is said to have been authorized, in so far as it is pertinent to this case, reads:

“If it shall be necessary, in the location of any part of any railroad, to occupy any road, street, alley or public way or ground of any kind, or any part thereof, it shall be competent for the municipal or other corporation or public officers or public authorities owning or having charge thereof, and the railroad company, to agree upon the manner and upon the terms and conditions upon which the same may be used or occupied. * * *

The act of the Ohio legislature of 1852 found in Vol. 50, O. L., 274, and which is alleged to have impaired the obligation of the said contract, in so far as it bears upon the contract in question, contains the **same identical language** as the act of 1848 under which the contract was

authorized, with the exception of the word "officers" used in place of the word "officer." There is not so much as the change of a word or syllable, as will be seen from the act itself.

Now, it is one of the fundamental doctrines announced by this Court that the obligation of a contract cannot be impaired by a law in existence at the time the contract was entered into. All contracts are entered into with reference to existing laws and the laws in force at the time become part and parcel of every contract. As has been so often announced, it is only by new legislative enactment **subsequent** to the contract that any obligation can be said to be impaired.

New Orleans Water Works Company vs. Louisiana, 185 U. S., 336.

Bacon vs. Texas, 163 U. S., 207.

McCullough vs. Virginia, 172 U. S., 102.

Mississippi and M. Railroad Company vs. Rock, 4 Wall, 171.

The whole claim in this case rests upon the extent of authority granted in the act of 1848 by which the municipal corporation and the railroad may agree with reference to the occupation of the streets of the municipality. The authority granted in the act of 1852, whatever its extent may finally be determined to be, is precisely and identically the same as the authority granted by the act of 1848. It is only in certain other parts of the act having reference to authority where there is a failure to agree, rather than when the agreement is entered into, that any change was made in the amendment of 1852. The law, so far as it bears upon this case, was in existence at the formation of the contract. It must be presumed to have been in the minds of the contracting parties, and they must have contracted with reference to

it. It could, therefore, in no sense be held to impair any of the obligations of the contract.

Yet, if this were a federal question, it cannot as we have shown be availed of at this stage of the proceedings to invoke federal jurisdiction. The record is searched in vain for the assertion that the act of 1852 impaired the obligation of this contract, whether in the pleadings or in the decision. The only reference to it is found in the amendment to the separate amended answer of the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, in the third paragraph on page 55 of the record, and there the only reference to it is that it is "in terms substantially a copy of said railroad act of 1848 herein referred to."

Until a federal question is presented to the state court and there decided, the state court can commit no error subject to review by the Supreme Court of the United States. A claim or right which has never been asserted cannot be said to have been impaired by a record and judgment which does not refer to it. The assignment of errors cannot be used as a cloak for the introduction of new and fictitious questions into a controversy for the purpose of invoking federal jurisdiction.

Hamilton Mnfg. Co. vs. Massachusetts, 6 Wall., 632.

Denny vs. Des Moines, 173 U. S., 193.

We submit, therefore, that this is an averment of a federal question without color or ground therefor, and the mere mention of it shows it devoid of merit. And so we further submit that no federal question is presented in the assignment of errors, and if there is, it is too late to raise it there for the first time.

No Federal Question Specifically Set Up in the Supreme Court of Ohio.

Reference to the only alleged federal question contained in the record of this case is found in the statement of the Cleveland and Pittsburgh Railroad Company and the Pennsylvania Company, filed in the Common Pleas Court of Ohio. This statement (page 64 of the Record) is as follows:

“Statement of the Cleveland and Pittsburgh Railroad Company and the Pennsylvania Company as to the Federal Question Raised in said Action.
(Filed February 10, 1909.)

The defendants, The Cleveland and Pittsburgh Railroad Company and the Pennsylvania Company, separately claim in this action that the contract entered into between the City of Cleveland and the Cleveland, Columbus and Cincinnati Railway Company, dated September 13, 1849, and appearing in the pleadings herein, was a legal, valid instrument, by which the City of Cleveland effectually parted with the right of possession of the property in dispute in this action, and said contract constitutes a defense for each of these defendants.

These defendants also separately claim and contend that said instrument of September 13, 1849, was authorized by the statutes of Ohio then in force, as such statutes were practically and generally construed and as they might be reasonably interpreted, and that thereafter, in a series of decisions beginning about the year 1877, the Supreme Court of the State of Ohio placed a construction upon said statutes which fully authorized the transaction evidenced by said contract of September 13, 1849; that these defendants, up to the time of such judicial construction by the Supreme Court, relied upon the language of said statutes and the practical construction given them, and proceeded to expend large sums of money in and upon the property in dispute, upon the assumption that the City of

Cleveland had parted with its interest in said property through and by virtue of said contract of September 13, 1849, and the construction of the Supreme Court in such cases holding that the statutes in force authorized the transaction as made.

These defendants and each of them claim and contend that to give the effect contended for by the plaintiff to the rulings of the Supreme Court of Ohio, in the following cases, namely:

Railway Company vs. Defiance, 52 Ohio St., 262

Railway Company vs. Elyria, 69 Ohio St., 414

Railway Company vs. City, 76 Ohio St., 481,

that such cases hold and decide that the contract of 1849 before referred to was not authorized by the statutes of Ohio then in force, would be to give a retroactive effect to such rulings and to impair contract rights, because thereby the court would now be declaring the contract of 1849 invalid, whereas at the time it was made, the statutes in force authorized such contracts, and that to now hold invalid such contracts by the holdings above referred to would be an impairment of the contract rights of the parties to said contract, in contravention and violation of the Constitution of the United States. Therefore, these defendants and each of them claim the protection of the provisions of the Constitution of the United States in this respect, and ask the court to make, as a part of the record herein, this claim of these defendants and each of them to the protection of the Constitution of the United States against the impairment of contract rights.

SQUIRE, SANDERS & DEMPSEY,

Attorneys for the Above-named Defendants.

Allowed and made a part of the record as of the 10th day of February, 1909.

WILLIS VICKERY,

Judge of the Court of Common Pleas."

It will be seen that the only alleged federal question raised in this statement is one of a change in view, or a change in judicial construction by the Supreme Court of

Ohio of the statute of 1848, a statute existing and in force when the contract in question was entered into.

The only other references in the entire record of this case to this supposed federal question are found in the amendment to the answer of The Cleveland, Cincinnati and Chicago and St. Louis Railway Company (Record, page 54), and in the amendment to the second amended answer of the Lake Shore and Michigan Southern Railway Company (Record, page 67). The same claim to a federal right is made there as in the statement above, and it may be briefly summarized as follows:

It is alleged that until about the year 1877 there was no interpretation or construction of the act of 1848 entitled "An act regulating railroad companies" by the Supreme Court of Ohio, but that in 1877, and again in 1881, said Supreme Court held that under said act it was competent and lawful for railroad companies and municipalities to agree by binding contract for the permanent and exclusive use and occupation by railroad companies, and for railroad purposes, of public highways and public grounds; that subsequent to 1877, said defendants, in reliance upon such contract and the construction so made, expended large sums of money in the improvement of the premises in question; and that if it be true that subsequent decisions of the courts of Ohio have changed the construction of said statute, such decisions cannot be given retroactive effect so as to render invalid said contract of September 13, 1849; that to give the effect contended for by the city to the rulings of the Supreme Court of Ohio, in *Railway vs. Defiance*, 52 O. S., 62, *Railway vs. Elyria*, 69 O. S., 414, and *Railway vs. City*, 76 O. S., 481, would now be declaring the contract of 1849 invalid, whereas at the time it was made, the

statutes in force authorized such contract, and that now to hold invalid such contracts by the holdings above referred to would be an impairment of the contract rights of the parties to said contract in contravention and violation of the Constitution of the United States.

What is really sought in this case is to have this Court change the construction placed by the state court upon its own laws. This by writ of error the Supreme Court of the United States has no power to do. This Court is asked to say that a different authority existed in the law of 1848 than the state court had found therein.

We submit that the state court has the right and power to construe its own laws, and the construction given by the state court to its own Constitution and statutes is conclusive on the Supreme Court of the United States, and will not be reviewed by that Court.

As said in *Louisville, N. O. & Texas Railway Co. vs. Mississippi*, 133 U. S., 587, "the construction of a state statute by the highest court of the state is accepted as conclusive in this court."

Likewise, in exact parallel to the case at bar, in *Fisher vs. St. Louis*, 194 U. S., 361, the question of the power of a municipality under a particular statute was held not to raise a federal question, but to be for the state court to determine.

So, the extent of the power of eminent domain under an Illinois statute was held in *Stone vs. Southern Illinois and Mississippi Bridge Co.*, 206 U. S., 267, not to be a federal but a state question, the court saying:

"Whether the statutes of the state authorize the incorporation of a bridge company to construct a bridge over a navigable river separating it from another state; whether such statutes confer the right of eminent domain on the corporation of another state, and whether such a corporation can exercise

therein powers other than those conferred by the state of its creation, are all questions of state law involving no federal questions, and the rulings of the highest court of the state are final and conclusive upon this court."

So also the Supreme Court cannot review the decision of a state court on a question respecting the construction of state statutes on which the title to land depends.

O'Connor vs. Texas, 202 U. S., 501.

Manley vs. Park, 187 U. S., 547.

The Supreme Court does not obtain jurisdiction to review a judgment of a state court simply because that judgment refuses to give effect to a valid contract, or because that judgment in fact impairs the obligation of the contract.

New Orleans Water Works vs. Louisiana Sugar Refining Co., 185 U. S., 336 at 350.

The decisions of state courts are not within the Constitutional provision with reference to impairing the obligation of contracts, and therefore do not raise a federal question within the meaning of Section 709 of the Revised Statutes. There must be, as said before, state legislation subsequent to the contract and not a judicial decision which is claimed to impair the obligation.

This doctrine was stated by Mr. Justice Harlan, speaking for the Supreme Court in *Lehigh Water Company vs. Easton*, 121 U. S., 388, at 392, as follows:

"The argument in behalf of the company seems to rest upon the general idea that this court, under the statutes defining its appellate jurisdiction, may re-examine the judgment of the state court in every case involving the enforcement of contracts. But this view is unsound. The state court may erroneously determine questions arising under a contract which constitutes the basis of the suit before it; it

may hold a contract void which, in our opinion, is valid; or its interpretation of the contract may, in our opinion, be radically wrong; but, in neither of such cases, would the judgment be reviewable by this court under the clause of the Constitution protecting the obligation of contracts against impairment by state legislation, and under the existing statutes defining and regulating its jurisdiction, unless that judgment, in terms or by its necessary operation, gives effect to some provision of the state constitution, or some legislative enactment of the state, which is claimed by the unsuccessful party to impair the obligation of the particular contract in question."

And likewise, as said by this Court, in *Commercial Bank vs. Buckingham*, 5 Howard, 317, as far back as 1847:

"It is the peculiar province and privilege of the state courts to construe their own statutes, and it is no part of the functions of this court to review their decisions or assume jurisdiction over them on the pretense that their judgments have impaired the obligation of contracts. Power delegated to us is for the restraint of unconstitutional legislation by the states, and not for the correction of alleged errors committed by their judiciary."

Thus, a writ of error will not lie from the Supreme Court to review a judgment of the state court construing a valid statute.

Central Land Company vs. Laidley, 159 U. S., 103.

Or the judgment of a state court determining the extent of legislative permission to sell a franchise of a corporation.

Snell vs. Chicago, 152 U. S., 191.

Or, as in the case at bar, a judgment of a state court determining the effect and validity of a law existing when a contract was made.

Bethell vs. Demaret, 10 Wall., 537.

But it is alleged that though this is true, when a state court changes its view as to the extent of the authority granted by a statute, that is changes the construction previously placed by it on the statute, there is such an impairment of contract obligation as to bring the case within the jurisdiction of this Court.

In *National Mutual B. & L. Asse. vs. Brahan*, 193 U. S., 635, it is held:

“The impairment of the contract clause of the federal Constitution cannot be invoked against what is merely a change of decision in a state court, but only by reason of a statute enacted subsequent to the alleged contract, and which has been upheld, or effect given it by the state court.”

And in *Turner vs. Wilkes County Commissioners*, 173 U. S., 461:

“The bondholders have brought the case here, claiming that by the decision below their contract has been impaired, because, as they allege, the Supreme Court of the State had decided before these bonds were issued, that the acts under which they were issued were valid laws and authorized their issue, and that in holding the contrary after the issue of these bonds the state courts had impaired the obligation of the contract, and its decision raised a federal question proper for review by this court.

But in this case we have no power to examine the correctness of the decision of the Supreme Court of North Carolina, because, this being a writ of error to a state court, we cannot take jurisdiction under the allegation that a contract has been impaired by a decision of that court, when it appears that the state court has done nothing more than construe its own constitution and statutes existing at the time when the bonds were issued, there being no subsequent legislation touching the subject. We are, therefore, bound by the decision of the state court in regard to the meaning of the constitution and laws of its own State, and its decision upon such a state of facts raises no federal question.”

Thus also a writ of error will not lie to a decision of a state court placing a different construction on a state statute relating to deeds and acknowledgements so as to render invalid a deed executed prior to the enactment, for, in *Central Land Company vs. Laidley*, 159 U. S., 103, at 109, Mr. Justice Gray delivering the opinion of this court, said:

“The questions upon the merits of this case, discussed at length by counsel, were whether the Supreme Court of Appeals of West Virginia rightly construed the provision of the Code of that State of 1868, which was, and was admitted to be, in all material respects, a re-enactment of the corresponding provision of the Code of Virginia, of 1860, prescribing the form of acknowledgement by a married woman of a deed of real estate; and whether the court below gave a construction of that provision less favorable to the validity of such a deed, than had been given to it by its own earlier decisions, and by the highest court of Virginia before the creation of the State of West Virginia. Those questions are not free from difficulty; and this court, before undertaking to pass upon them, must be satisfied that it has jurisdiction to do so.

The grounds relied on for invoking the appellate jurisdiction of this court are, in substance, that by the decision of the Supreme Court of Appeals of West Virginia, without any legislative action, the obligation of the contract contained in the deed from Mr. and Mrs. Pennybacker to Huntington, the grantor of the plaintiff in error, has been impaired, and the plaintiff in error has been deprived of its property without due process of law.

Assuming, without deciding, that these grounds were sufficiently and seasonably taken in the courts of West Virginia, we are of opinion that they present no federal question.”

Nor will the writ lie to a decision of a state court differing from a former opinion with respect to the limit of private ownership upon tide-waters.

Mobile Transportation Co. vs. Mobile, 187 U. S., 479.

Nor to a decision of a state court construing a state statute differently from a construction previously placed by it on a similar statute.

Wood vs. Brady, 150 U. S., 18.

And in Bacon vs. Texas, 163 U. S., 207, this Court held that no federal question was presented, even where the state court placed a different construction on a state statute, even though its former holding had become a rule of property. The court said:

"It is, however, urged that the Texas courts for many years had construed the acts passed by the State relating to surveys of its public lands as permitting what are termed 'adoptive surveys' i. e. surveys adopted from those which had once been made in the field, and that the act of 1879 in simply providing for surveys of lands for which applications to purchase might be made left it to the general law, which provided the details and manner of carrying out such survey. The construction of the general law which had been thus given by the courts upon the question of what was a sufficient survey, it is claimed, had become a rule of property which parties were entitled to rely upon, and which no court could overturn, and if it did so, a contract was impaired, and the judgment was reviewable by this court. The proposition cannot be maintained as a basis for giving this court jurisdiction upon writ of error to the state court. It ignores the limits to our jurisdiction in this regard, which, as has been seen, is confined to legislation which impairs the obligation of a contract.

The argument involves the claim that jurisdiction exists in this court to review a judgment of a

state court on writ of error when such jurisdiction is based upon an alleged impairment of a contract by reason of the alteration by a state court of a construction theretofore given by it to such contract or to a particular statute or series of statutes in existence when the contract was entered into. Such a foundation for our jurisdiction does not exist. * * *

In other words, we have no jurisdiction, because a state court changes its views in regard to the proper construction of its state statute, although the effect of such judgment may be to impair the value of what the state court had before that held to be a valid contract."

We therefore submit that conceding every contention of the railroad, and though the state court has erroneously construed the act of 1848, though its judgment in so doing impairs the obligation of the contract of 1849, though the Supreme Court has clearly changed about in its construction of the state law, there is yet no federal question presented and the writ of error should be dismissed.

No Change in Decision Has in Fact Taken Place.

But if the foregoing should finally be resolved in favor of the railroads, there has in fact never been any change in view by the Supreme Court of Ohio. Cases relied upon by the railroads as establishing the doctrine that by the act of 1848 a municipality could part with possession of its streets, and could grant away by contract its exclusive occupation, are as follows:

Railroads vs. Commissioners, 31 O. S., 338.

This was purely a crossing case, and it was held, in the syllabus, that power given by a charter of a railroad company to construct its road across a public highway upon condition that the same be restored to its former

state, "or in a sufficient manner not to impair its usefulness" does not authorize the company permanently to appropriate any portion of the public highway by obstructions, which materially interfere with the public travel.

No question as to the nature and extent of the rights conferred by Section 11 of the Act of February 11, 1848 (afterward 3282 R. S.), was before the court or was attempted to be decided, but Judge Boynton, on page 346 of the opinion, referred to that section, by way of illustration and comparison, and in that connection said:

"It is very obvious from a comparison and consideration of these two provisions that they were intended to subserve different purposes. The one secured to the company the right to appropriate for a compensation in money, or to use upon such terms and conditions as were agreed upon with the public officers or authorities, any part of the highway or public grounds; and the other secured the right to cross or divert the road or stream upon the condition that its former usefulness should not be impaired."

The judge here uses substantially the language of the statute, and nothing is said as to whether or not the right to use was exclusive.

This case was cited as authority, in the opinions, both in *Zanesville vs. Fannan*, 53 O. St., 605, and *Railroad vs. Elyria*, 69 O. St., 414, and plainly there was no thought in the mind of the court that there was any conflict. Indeed, in *Zanesville vs. Fannan* (on page 615) immediately after citing the case referred to, Judge Williams adds:

"The duty rests upon the principle that the public use is the dominant interest in the street, and that it continues to be so notwithstanding the construction of the railway in or across it."

Railway vs. Carthage, 36 O. St., 631.

This seems to be the case most relied on by counsel for the railroads. The court held that where a village and a railroad company entered into an agreement, whereby a right of way was granted to the company through and across streets in said village, this was a contract which the village had no power to rescind or modify without the consent of the company, but there is not the slightest suggestion that the village had power to or did grant an exclusive right to use or occupy streets.

This case is cited in the opinion in Zanesville vs. Fannan (on page 615).

In Railroad vs. Railroad, 36 O. St., 239, the court was called upon to directly construe the 12th section of the act of 1852 (S. & C., 278), which is substantially the same as Section 11 of the act of 1848 (and now Section 3283, R. S.), under authority of which the plaintiff and the city authorities had agreed upon the terms and conditions upon which the plaintiff's road was constructed upon the street of the city, and the opinion is expressed that it was not within the power of the municipal authorities by such agreement to confer upon the plaintiff an exclusive right to use the streets for railroad purposes, and this opinion was by the same judge who gave the opinion in Railway vs. Carthage, in the same volume.

State ex rel. vs. Railway, 37 O. St., 157.

The syllabus of the case is as follows:

"The board of public works of the state is not authorized by law to grant to a railroad corporation the right to lay its track and to maintain and operate a railroad, on and along the berme bank of a navigable canal belonging to the state."

In the opinion (on page 170) speaking of Section 3283, and pointing out that a canal is not included in that section, it is said:

“This section confers upon the corporation the same power to acquire this class of public property, either by agreement with the proper authorities, or by appropriation, as it possesses under Section 3281 as to private property. If the company is unable to agree with those in charge of this species of property, it may resort to the courts, in accordance with the terms and provisions of the Revised Statutes, Sections 6414-6453.”

Evidently the reference here is as to the manner of acquiring this class of public property, that is, the right to use and occupy roads, streets, etc., but there was no attempt to define the nature and extent of the rights so acquired. In any other view the language quoted would be the most uncalled for dictum.

Dillenbach vs. Xenia, 41 O. St., 207.

This case holds that the city is not liable to an abutting lot owner for damages resulting from the use of the street by a railroad in the manner authorized by Section 3283. In Steubenville vs. McGill, 41 O. St., 235, it was held that the city's supervision of and responsibility for the condition of the street continued after a grant to a railroad under Section 3283, and both of these cases are referred to and distinguished in Zanesville vs. Fannan, 53 O. St., 605.

However, in Dillenbach vs. Xenia (on page 212), this language is used:

“When the city authorized railroad tracks to be laid in one of its streets, it granted nothing only its rights in the street, leaving the rights of adjacent lot owners therein unimpaired.”

Clearly the opinion here does not undertake to define exactly what are the rights of the city thus granted or the rights of adjacent lot owners which remained unimpaired. The fact that *Steubenville vs. McGill* follows almost immediately shows that there was no purpose to say that, when a city granted the right to use and occupy a street under Section 3283, it thereby **granted all** of its rights in the street.

Railroad vs. O'Hara, 48 O. St., 343.

This case holds that the owners of the soil of a highway, taken by a railroad company for its roadway, under an agreement between the company and the commissioners of the county as to the terms and manner of its use, as provided in Section 3283, Revised Statutes, is entitled to compensation for its appropriation.

Counsel for the railroad companies claim to find something in the opinion (on pages 352 and 353) which lends support to their contention, but an examination will show that there is no foundation whatever for their claim.

On the whole, it appears that none of the cases so industriously collected by counsel support the contention that this Court ever held that the act of 1848 or Section 3283 R. S. conferred power on the city council to grant to railroad companies an exclusive right of occupancy in a public street. The isolated expressions in the opinions relied on do not warrant the claims made, and, if they did, they would be mere dicta.

Therefore, we submit that nothing which smacks of a federal question was raised in the Supreme Court of Ohio, and that the writ of error should therefore be dismissed.

No Federal Question Was Decided in the Supreme Court of Ohio, and the Judgment Rests Upon Independent Grounds of Purely State Law Sufficient to Support it.

It is fundamental that in order to give the Supreme Court jurisdiction, it must appear that the validity of a particular state statute so challenged in the state court is in contravention of the federal Constitution, and the decision of the state court must be in favor of the validity of the state statute. No federal question is presented where the state court upholds the statute upon any independent ground broad enough to maintain its judgment, irrespective of the constitutionality of the state law.

New Orleans Water Works Co. vs. Louisiana Sugar Refining Co., 125 U. S., 18.

Kennebec Railroad Co. vs. Portland Railroad Co., 14 Wall., 23.

The Supreme Court of Ohio simply affirmed the judgment of the Circuit Court of Ohio without opinion, so that in order to determine whether the federal question was decided by the state court, or whether it was necessary to a decision in the state courts, we must examine the opinion of the Circuit Court now the Court of Appeals (Appendix, page 7), the next inferior court to the Supreme Court of the State. Here again the lack of any foundation for this writ of error is disclosed. We look in vain for any mention in this opinion of a federal question. The federal Constitution is not mentioned, nor any conflict therewith. In the assignment of errors the only alleged error is that the state court gave a certain effect to the act of 1852, yet the act of 1852, and its supposed conflict with the federal Constitution is not mentioned in the decision. Can it be other than apparent that this claim to a federal question by the railroads is absolutely colorless and entirely devoid of merit?

The alleged change of decisions, however, is thus dealt with by the court:

“Another defense relied upon by the defendants below is the alleged change in the judicial construction of Section 11 of the Act of February 11, 1848 (46 O. L., 45), and Rev. Stat. Sec. 3283, since the contract of 1849 was entered into thereunder. In fact, no judicial construction of said section was ever made prior to that time, for the original act had been in force but little more than a year, when the contract was made. It is said, however, that the same doctrine applies, where, on the faith of a construction judicially pronounced by the court of last resort in any state, upon a statute of the same state, property rights have grown up or been extended prior to a change in such construction as evinced in later decisions.

Whether this modification of the well-known rule of property be tenable or otherwise, it is not true that any such change of judicial construction of the statutes in question has taken place in the decisions of the Supreme Court of Ohio. It is true that various dicta appear in the opinions of judges of the Supreme Court touching upon the proper construction of this statute, prior to and inconsistent with the formal decisions by the Supreme Court above cited. But in no case were these dicta necessary to the decision of the cases in the report of which they appear, nor even essential to the lines of reasoning upon which these decisions of the court were founded and fortified.”

Little Miami Railway Co. vs. Commissioners of Greene County, 31 O. St., 338.

Cincinnati & Southern Railroad Co. vs. Carthage, 36 O. St., 631.

State vs. Railway Co., 37 Ohio St., 158.

The rule of property which has been invoked in this connection has no application where the supposed rights that were swept away by later decisions

have been founded upon no more substantial basis than mere obiter dicta.

Friedman vs. Suttle, 9 L. R. A. (N. S.), 933.

The principle, moreover, on which the present authoritative interpretation of Sec. 3283 rests, was foreshadowed as long ago as *Hatch vs. Railway Co.*, 18 Ohio St., 92, 119; and still more clearly in *Hickok vs. Hine*, 23 Ohio St., 523, paragraph six of the syllabus, which reads:

'Where the legislature has power to require one public easement to yield to another more important, the intention to grant such power must appear by express words, or by necessary implication; and such implication arises only when requisite to the enjoyment of the powers expressly granted, and can be extended no further than such necessity requires.'

So also in *Little Miami and Columbus & Xenia Ry. Co. vs. Dayton*, 23 Ohio St., 510, paragraph I of the syllabus, reads:

'Land appropriated to a particular public use is not thereby withdrawn from the liability to be taken by legislative authority, in the exercise of the power of eminent domain, for another public use; but a subsequent grant cannot be construed to authorize the destruction or subversion of the former use, unless such appears by express words, or by necessary implication, to be the legislative intent.'

These cases are all prior to those relied upon by the defendants in this behalf.

And the answers of the railroads in the *Holmes* case, already referred to, show, moreover, a considerable appreciation, even at that early day, of the true construction of the statute on which their rights are founded, and the perils which they would encounter should they undertake utterly to exclude the public from the street use to which the property in question had admittedly been dedicated."

So it is seen that no federal question was decided, and that the change in judicial decision alleged by the railroads to bring about the federal question never took place.

That the decision rested upon independent ground of purely state law sufficient to support the judgment will be readily seen by the following extract from the opinion:

"Nor will we indulge any doubt as to the original validity of the city's title to this street as such. Its long and uninterrupted use and enjoyment by the public for half a century before the defendants' use began would raise a conclusive legal presumption, were resort thereto required, that this street was at some anterior period laid out and established by competent authority."

Railroad Co. vs. Roseville, 76 Ohio St., 108, 117.

"All the original streets and public grounds of Cleveland are in like case, and the sufficiency of their dedication was long ago settled by repeated adjudications, both reported and unreported, and is therefore *stare decisis*."

Holmes vs. R. R., 8 Am. Law Reg., 716.

City of Cleveland vs. Ry. Co., 93 Fed., 113.

Gleason vs. Cleve., 49 Ohio St., 431.

"Inasmuch, moreover, as it is not and never has been in the power of the legislature, unless in the exercise of the power of eminent domain to authorize property dedicated to the public use for a specific purpose, as in this case, to be used for a purpose inconsistent with that for which it was dedicated, it is immaterial what limitations the city sought to place upon the public use of said street for street purposes, or to what other purposes it may have sought to divert it, either with or without legislative authority, during that early period."

The L. & N. R. Co. vs. Cincinnati, 76 Ohio St., 481.

But what is far more significant is the fact that this judgment not only does not impair the contract rights of plaintiffs in error, but on the contrary expressly preserves them. (Record, page 11). The judgment reads as follows:

"This cause coming on for hearing this day, and all parties hereto having waived a jury and submitted this cause to the court, the same was heard upon the pleadings and the evidence; and upon consideration thereof the court finds that the plaintiff has a legal estate in and is entitled to the immediate possession of the premises described in the petition, subject to all such contract rights as defendants, or any of them, may have under and by virtue of a contract, dated September, 1849, by and between the City of Cleveland and The Cleveland, Columbus and Cincinnati Railroad Company, which said contract is recorded in Vol. 51, pages 187, 188, 189 and 190 of the Records of Cuyahoga County, Ohio, and being the same contract referred to in the pleadings of the parties herein, including such rights under and by virtue of said contract as any of said defendants have acquired by succession from or agreement with the Cleveland, Columbus and Cincinnati Railroad Company, its successors or assigns, to lay, maintain and use tracks over and across the portions of said premises hereinafter designated as first, second and third parcels, without thereby or in any manner excluding free use of the whole and every part of said premises by the public for street purposes and full control and supervision of the same by the proper municipal officers of said city.

And the court further finds that the defendants have unlawfully kept the plaintiff out of the possession of said premises, etc., etc."

The state court expressly preserved the contract, and all its obligations, but held that the obligation to give up possession was never a part of the contract. Surely no question is anywhere presented by which this Court

could take cognizance. Yet the railroads are in this Court saying that their contract obligations have been impaired. The Ohio court said that the obligation claimed never existed, and their judgment on this point should be final.

Thus it is apparent that no federal question was decided by the state courts; that no federal question was necessary to the decision, and that the judgment rests entirely upon independent grounds of purely state law, so that no error is preserved for this court.

Our conclusions are, therefore, that the writ of error should be dismissed, or the judgment of the Supreme Court of Ohio affirmed for the following reasons:

First. The federal question relied upon here is not the federal question presented to the state courts in which this action originated.

Second. Both the federal question alleged and relied upon below and the one alleged here are frivolously taken, for

1. No federal question is presented to this court by the assignment of errors.

2. No federal question was specifically set up in the Supreme Court of Ohio.

3. No federal question was decided by the Supreme Court of Ohio, and because the judgment in that court rested upon independent ground of purely state law sufficient to support it.

Respectfully submitted,

NEWTON D. BAKER,

Attorney of Record for The City of Cleveland,
Defendant in Error.

JOHN N. STOCKWELL,

City Solicitor of the City of Cleveland, and
ARTHUR F. YOUNG, Ass't City Solicitor,
Of Counsel.

APPENDIX.

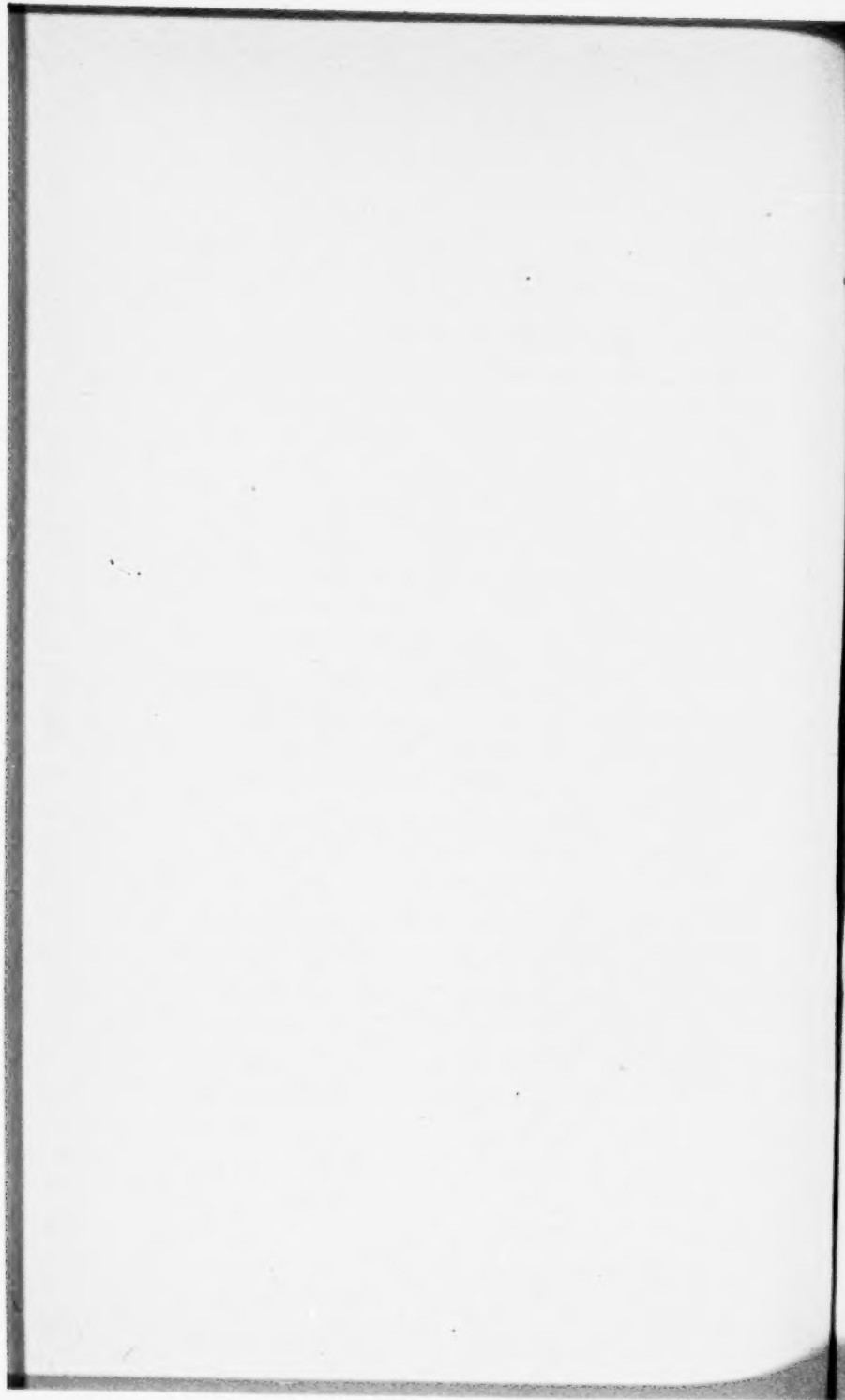
AN ACT

Regulating Railroad Companies.

Vol. 40 Ohio Laws, page 40.

Sec. 11. If it shall be necessary in the location of any part of any railroad to occupy any road, street, alley or public way or ground of any kind, or any part thereof, it shall be competent for the municipality or other corporation or public officers, or public authorities, owning or having charge thereof, and the railroad company to agree upon the manner and upon the terms and conditions upon which the same may be used or occupied; and if said parties shall be unable to agree thereon, and it shall be necessary in the judgment of the directors of such railroad company, to use or occupy such road, street, alley or other public way or ground, such company may apply to the Court of Common Pleas of the county in which the same is situate setting forth the aforesaid facts, and said court shall thereupon appoint at least three judicious disinterested freeholders of the county, who shall proceed to determine whether such occupation is necessary, and if necessary, the manner and terms upon which the same shall be used, and make return of their doings in the premises to said court, who shall if they deem the same just and proper, make the necessary order to carry the same into effect, or they may order a review of the same, as such court may consider justice and the public interest require.

Passed February 11, 1848.

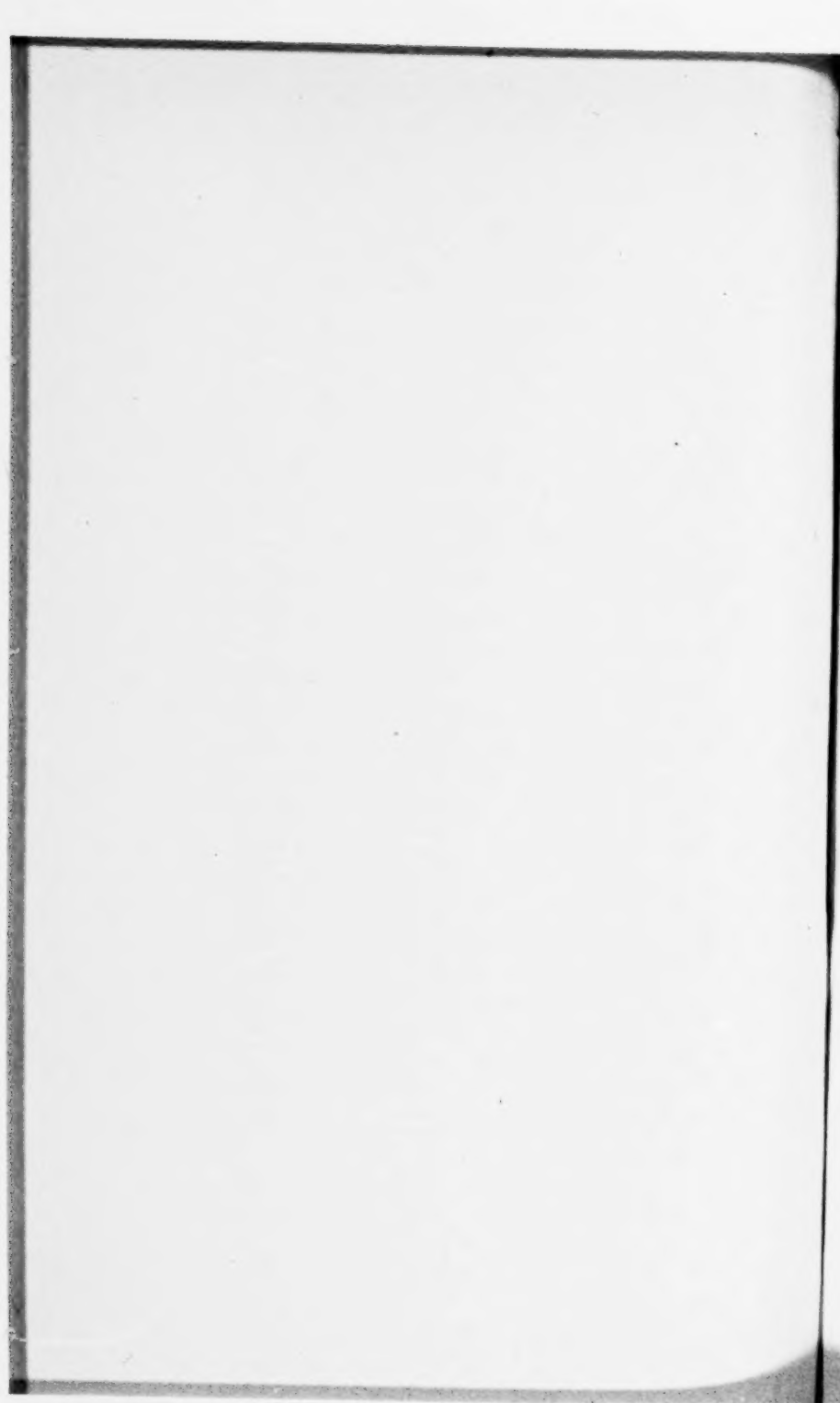


AN ACT
To Create and Regulate Railroad Companies.

Vol. 50 Ohio Laws, page 274.

Sec. 12. If it should be necessary in the location of any part of any railroad to occupy any road, street, alley or public way or ground of any kind, or any part thereof, it shall be competent for the municipality or other corporation or public officers, or public authorities, owning or having charge thereof, and the railroad company to agree upon the manner and upon the terms and conditions upon which the same may be used or occupied; and if said parties shall be unable to agree thereon, and it shall be necessary in the judgment of the directors of such railroad company, to use or occupy such road, street, alley or other public way or ground, such company may appropriate so much of the same as may be necessary for the purposes of such road, in the same manner and upon the same terms, as is provided for the appropriation of the property of individuals by the tenth section of this act.

Passed May 1, 1852.

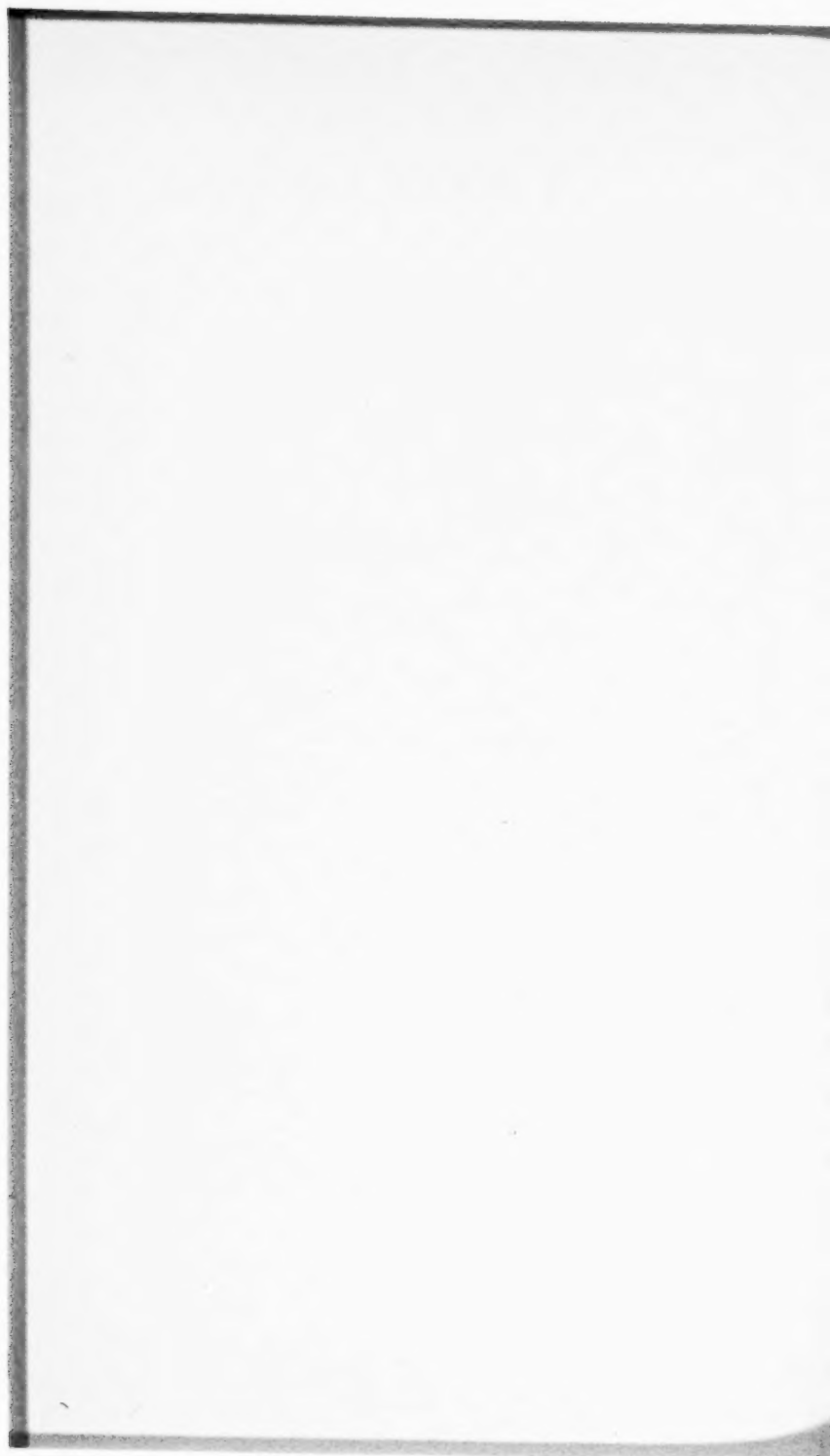


IN THE SUPREME COURT OF OHIO.

Error to the Circuit Court of Cuyahoga County,
January Term, 1912.

Reported Without Opinion.

No. 12461. The Cleveland & Pittsburg Railroad Co. et al. vs. the City of Cleveland et al. Decided October 22, 1912. Error to Circuit Court of Cuyahoga County. Messrs. Squire, Sanders & Dempsey, for plaintiffs in error. Mr. Newton D. Baker, City Solicitor; Mr. James Lawrence, Mr. George L. Phillips and Messrs. Cook, McGowan & Foote, for defendants in error. Judgment affirmed. Johnson, Donahue and O'Hara, JJ., concur.



IN THE CIRCUIT COURT.

Eighth Circuit.

Error to the Court of Common Pleas.

STATE OF OHIO, CUYAHOGA COUNTY, ss.

January Term, 1910.

No. 4494.

THE CLEVELAND AND PITTSBURG RAILROAD
COMPANY ET AL.,
Plaintiffs in Error.

vs.

THE CITY OF CLEVELAND ET AL.,
Defendants in Error.

OPINION.

Rendered January 17, 1910.

HENRY, MARVIN AND WINCH, JJ.

Henry, J:

This proceeding in error is brought to reverse the judgment rendered by the Cuyahoga Common Pleas Court in behalf of the plaintiff below in an action of ejectment begun by the City of Cleveland, under favor of Rev. Stat., Sec. 5781, to recover possession from divers railroad companies, defendants below, of the greater part of street on the lake front between the Cuyahoga river and the Union Station in said city.

The court below found:

“That the plaintiff has a legal estate in and is entitled to the immediate possession of, the prem-

ises described in the petition, subject to all the rights which the defendants herein, and each of them, have in and to said premises, under and by virtue of a contract dated September, 1849, by and between the City of Cleveland and the Cleveland, Columbus and Cincinnati Railroad Company," etc.

This judgment fails to define the rights of the defendants below thus reserved in such manner that a writ of restitution may discriminate what is to be restored to the city from what is not. Inasmuch as the controversy turns on the extent of the rights conferred upon the defendants below by the contract of 1849, the judgment begs the very question at issue.

Passing by this question, however, for the present, we hold, at the outset, that ejectment by the city to recover possession of its street is, however, its estate or interest therein be defined, and despite any easement of the defendants below therein, a remedy both fitting and adequate.

Paige vs. Cherry, 17 C. C., 579, 582; 52 O. S., 644.

Fulton vs. Mehrenfeld, 8 O. S., 440; 1 Disney, 151; 2 Handy, 176.

City of St. Louis vs. The Mo. Pac. Ry. Co., 114 Mo., 13.

Nor will we indulge any doubt as to the original validity of the city's title to this street as such. Its long and uninterrupted use and enjoyment by the public for half a century before the defendants' use began would raise a conclusive legal presumption, were resort thereto required, that this street was at some anterior period laid out and established by competent authority.

Railroad Co. vs. Roseville, 76 Ohio St., 108, 117.

All the original streets and public grounds of Cleveland are in like case, and the sufficiency of their dedica-

tion was long ago settled by repeated adjudications, both reported and unreported, and is therefore *stare decisis*.

Holmes vs. R. R., 8 Am. Law Reg., 716.

City of Cleve. vs. Ry. Co., 93 Fed., 113.

Gleason vs. Cleve., 49 Ohio Stat., 431.

Inasmuch, moreover, as it is not and never has been in the power of the legislature, unless in the exercise of the power of eminent domain to authorize property dedicated to the public use for a specific purpose, as in this case, to be used for a purpose, inconsistent with that for which it was dedicated, it is immaterial what limitations the city sought to place upon the public use of said street for street purposes, or to what other purposes it may have sought to divert it, either with or without legislative authority during that early period.

The L. & N. Railroad Co. vs. Cincinnati, 76 Ohio Stat., 481.

Board of Education of Van Wert vs. The Inhabitants et al., 18 Ohio Stat., 221.

LeClereq et al. vs. Trustees of Gallipolis, 7 Ohio (part 1), 217.

Suffice it to say that in the very contract, already alluded to, the parties themselves have referred to and characterized the premises in controversy, including much of the present large littoral accretion, as being at and prior to the date of said contract, a street of the City of Cleveland.

The city had always recognized the street as such; and the equivocal phrases in the early municipal records, "Bath street, so-called," and "land known as Bath Street property," are referable not to any uncertainty as to its legal status, but to the anomalous littoral boundary and variable width. It is true that, pursuant to the provisions concerning streets contained in the city's charter,

enacted March 5, 1836 (34 O. L., 271), as amended by the act (irreconcilable, by the way, with the above decisions), passed December 21, 1844, the city council had, with respect to said premises, availed themselves of the qualified "power to lease any portion, or portions, of said streets, not in their opinion required for public use." The so-called Merchant Map, which the council procured and put on record, in order to facilitate such temporary leasing, and which distinguishes the portions of Bath Street allotted for that purpose from the residue then deemed to be required for public use and travel, was plainly not intended to be "conclusive evidence of the position and limits of such street," nor to "settle and establish the boundaries" thereof, under sections 6 and 8 of the charter, in such manner as permanently to exclude from public use the premises in controversy. The power conferred by those sections is to ascertain, not to alter street boundaries; to establish the location of streets, not to abandon them. The settling of street boundaries is not a method available for vacating the major part of a street or for deliberately extinguishing the dedicated public use of any portion thereof.

There is no pretense here that the disputed part of Bath Street was ever formally vacated, in compliance with the provision of any statute expressly adapted to that end. As stated in *Lake Shore & Mich. Southern Ry. Co. vs. City of Elyria*, 69 Ohio Stat., 414, 429:

"We find nowhere any other method of vacating such public highway, or any part of it. By the proper establishment and opening of the street the village or city becomes vested with the full title thereto, in trust for the public, and it is not within the delegated powers of the municipal council to barter or grant away such title, except in the mode provided for the purpose."

The strength and character of the city's ancient title being thus beyond question, what grounds had the defendants below for withholding possession of the premises? The answers plead the following contract, which admittedly inures to all the defendants, and binds the city so far as it had power so to contract:

* * * *

(Contract omitted.)

The only statute of this state then authorizing contracts between municipal and railroad corporations, for the use and occupation by the latter of streets belonging to the former is found in Section 11 of "An Act regulating railroad companies" (46 O. L., 40, 45), passed February 11, 1848. Section 9 of that act provided that any "such corporation is authorized to enter upon any land for the purpose of examining and surveying its railroad line, and may appropriate so much thereof as may be deemed necessary for its railroad, including necessary sidetracks, depots, workshops and water stations," etc.

The power of eminent domain was thus conferred upon railroads for the acquisition of private property for railroad purposes. For their acquisition of the right to use or occupy public property already devoted to public uses, Section 11 of the same act provided that:

"If it shall be necessary in the location of any part of any railroad to occupy any road, street, alley or public way or ground of any kind, or any part thereof, it shall be competent for the municipal or other corporation or public officers, or public authorities, owning or having charge thereof, and the railroad company to agree upon the manner, and upon the terms and conditions upon which the same may be used or occupied; and if said parties shall be unable to agree thereon, and it shall be necessary in the judgment of the directors of such railroad

company, to use or occupy such road, street, alley, or other public ground, such company may apply to the Court of Common Pleas of the county in which the same is situate, setting forth the aforesaid facts," etc.

The Revised Statutes of Ohio, Sections 3281 and 3283 now embody substantially similar provisions.

The latter of these statutes has since been construed to authorize the acquisition by railroad companies not of an exclusive and permanent estate or easement, but of a right merely to the joint use and occupancy with the public of lands which were already dedicated or appropriated to public uses. Such companies may, by agreement or action for appropriation, acquire the right to use a public street for such railroad purposes and in such manner as shall not destroy the street, or exclude the public use and enjoyment of any and every part of it for street purposes, or cause any nuisance therein, or interfere with the full control and supervision thereof by the municipal authorities.

L. S. & M. S. Railroad Co. vs. City of Elyria, 69 Ohio Stat., 414.

Railroad Co. vs. Defiance, 52 Ohio Stat., 262.

Zanesville vs. Fannan, 53 Ohio Stat., 605.

L. & N. Railroad Co. vs. City of Cincinnati, 76 Ohio Stat., 481.

It follows that unless the rights of the defendants below are otherwise enlarged, the contract of September 13, 1849, must be restricted in its operation to the limitations prescribed by the construction thus put upon the statute whereon it rests, and that as so restricted, it could afford no defense to the action below.

A striking fact, however, in this case and one upon which the defendants below place much dependence, is the great interval between the accrual and the assertion

of the city's right, together with the defendants' outlay in the erection of many large and costly structures upon the premises during that interval under color of absolute ownership thereof, for their railroad purposes.

If the city were asserting a merely proprietary title, its action would scarcely lie after this lapse of time, but its title to its streets is held, as already noted, in trust for the public, whose sovereign right no prescription nor laches should abridge.

We are not unaware of the early decisions in this state affirming the application of the statute of limitations to somewhat similar cases, but the authority of those decisions is questioned in *Heddleston vs. Hendrichs*, 52 Ohio Stat., 460, where Minshall, J., says at page 467:

"More recent cases place the right of the public as against encroachments on its highways, however long continued, on the ground that they are public nuisances in favor of which the statute of limitations does not run."

See also:

L. S. & M. S. Railroad Co. vs. City of Elyria, 69 Ohio Stat., 414, 435.

Wasteney vs. Schott, 58 Ohio Stat., 410, 415.

Those early decisions are, moreover, contrary to the well-defined current of American authority and this Court has long since determined that their application must be restricted to the particular facts upon which they are founded, until they shall be, as they ought to be, overruled.

Wright vs. Oberlin, 23 Cir. Ct., 509.

Morehouse vs. Burgot et al., 22 Cir. Ct., 174.

So also the loss by mere abandonment, mere non-user, of the common right of highway rests finally on no other or better footing than loss by adverse posses-

sion, and is therefore equally illusory. *Nail & Iron Co. vs. Furnace Co.*, 46 Ohio St., 544. Nor does the doctrine of equitable estoppel, when invoked to accomplish the same result, occupy any firmer foundation. If, as already shown, the legislature cannot, unless in the exercise of eminent domain, authorize property to be diverted from the public use to which it was originally dedicated, it is, of course, beyond the reach of any subordinate agency of government so to do; and that which is thus incapable of direct accomplishment must be equally unattainable by indirection. So where there is an entire absence of power to make a grant originally, there can be no room for an estoppel to grow up afterwards. *Railroad Co. vs. City*, 76 Ohio St., 481, 507. And this is so, because whoever relies upon the conduct of public authorities must take notice of the limits of their power.

Hubbard vs. Fitzsimmons, 57 Ohio St., 436, 449.

It being once established that the premises in controversy were originally dedicated to the public for street purposes, no grant, nor prescription, nor mere non-user, nor equitable estoppel can change its status.

In the case, however, of the defendant, *The Cleveland & Pittsburg Railroad Company*, the plea of the statute of limitations is said to rest upon a different footing, since it claims under a chain of title independent of the contract of 1849, and perhaps also of that on which the dedication of Bath Street depends. The intrinsic merits of this title need not be examined, for it is conclusively presumed, as already stated, to be inferior to the ancient title of the City of Cleveland, and its merit is moreover immaterial to the application of the statute of limitations.

Unfortunately for this plea, however, the defendant interposing it is confronted with its own formal public disclaimer of the color of title which it now claims was then ripening into prescriptive right. After the contract of 1849 was entered into, this defendant was called upon to defend its right of possession and occupancy in an action brought by Henry Holmes and Julius C. Sheldon, et al., on behalf of themselves and the other heirs of the stockholders of The Connecticut Land Company to recover the Bath Street property. The suit was tried before Judge McLean in 1857, and is reported in 93 Fed. Rep., 100. The claim of the plaintiffs was that the City of Cleveland had abandoned Bath Street, and that the plaintiffs, therefore, as heirs of the original proprietors, had a right to recover possession of the property. The Cleveland and Pittsburg Railroad Company by its answer expressly repudiated the claim of title on which it now seeks to found its prescriptive right, and it, and the other defendant railroad companies planted themselves squarely and solely upon their rights as derived from the contract of 1849. These answers, aver, as to each defendant.

"That it has the right as a competent part of the public, to occupy with the consent of said city said Bath Street in the manner and for the purposes aforesaid; that such are a great public accommodation and not incompatible with the purpose intended by said Connecticut Land Company in dedicating the same to the public, as aforesaid, but consistent therewith, and that the City of Cleveland in permitting this defendant thus to use a limited portion of said street and thereby distributing its legitimate use so as to best subserve the convenience and business interest of its inhabitants and the rest of the public, has committed no breach of trust nor violated any public or private right, but performed

rather a duty which it owed as well to the forecast of said Land Company as to the public.

The defense prevailed and the contract was upheld. The city was not a party to the action, and therefore is not bound by the judgment, but that fact affords no reason for refusing to give effect to the Cleveland and Pittsburg Railroad Company's admission that it was not then holding adversely to the city, as it now claims to have done. Not only is its answer in the Holmes case admissible in evidence now, but it is conclusive as against its alleged title by prescription, not indeed by any tolling of the statute, but by characterizing the defendant's possession as permissive, and consistent with the original public use.

And this is after all the common footing of all the railroads under the contract of 1849, the act of 1848, and the dedication of Bath Street as such. It is doubtful if any unequivocal permanent exclusion of the public use or complete disseizin of the city ever occurred before this action was begun. The contract of 1849 passed to the railroads, so far only as the grantor had "the power or legal authority so to do, the right to the full and perpetual use and occupancy for their railroad tracks, turnouts, engines, and car and passenger houses, turn tables, water tanks or stations, avenues to and from the same, leaving open spaces between when deemed expedient," etc. This appropriation of an easement for railroad purposes in part of Bath Street was valid in so far only as the parties had the corporate power and the lawful right to agree to it. The scope of the easement was expressly left open to judicial construction, and no lawful right, either permissive or prescriptive, can spring therefrom to permanently exclude the public use of any part of Bath Street for street purposes.

Another defense relied upon by the defendants below is the alleged change in the judicial construction of Section 11 of the Act of February 11, 1848 (46 O. L., 45), and Rev. Stat., Sec. 3283, since the contract of 1849 was entered into thereunder. In fact, no judicial construction of said section was ever made prior to that time, for the original act had been in force but little more than a year, when the contract was made. It is said, however, that the same doctrine applies, where, on the faith of a construction judicially pronounced by the court of last resort in any state, upon a statute of the same state, property rights have grown up or been extended prior to a change in such construction as evinced in later decisions.

Whether this modification of the well-known rule of property be tenable or otherwise, it is not true that any such change of judicial construction of the statutes in question has taken place in the decisions of the Supreme Court of Ohio. It is true that various dicta appear in the opinions of judges of the Supreme Court touching upon the proper construction of this statute, prior to and inconsistent with the formal decisions by the Supreme Court above cited. But in no case were these dicta necessary to the decision of the cases in the report of which they appear, nor even essential to the lines of reasoning upon which these decisions of the court were founded and fortified.

Little Miami Railway Co. vs. Commissioners of
Greene County, 31 Ohio St., 338.

Cincinnati & Southern Railroad Co. vs. Carthage,
36 Ohio St., 631.

State vs. Railway Co., 37 Ohio St., 158.

The rule of property which has been invoked in this connection has no application where the supposed rights

that were swept away by later decisions have been founded upon no more substantial basis than mere obiter dicta.

Friedman vs. Suttle, 9 L. R. A. (N. S.), 933.

The principle, moreover, on which the present authoritative interpretation of Sec. 3283 rests, was foreshadowed as long ago as *Hatch vs. Railway Co.*, 18 Ohio St., 92, 119; and still more clearly in *Hickok vs. Hine*, 23 Ohio St., 523, paragraph six of the syllabus of which reads:

“Where the legislature has power to require one public easement to yield to another more important, the intention to grant such power must appear by express words, or by necessary implication; and such implication arises only when requisite to the enjoyment of the powers expressly granted, and can be extended no further than such necessity requires.”

So also in *Little Miami and Columbus & Xenia Ry. Co. vs. Dayton*, 23 Ohio St., 510, paragraph 1 of the syllabus reads:

“Land appropriated to a particular public use is not thereby withdrawn from the liability to be taken by legislative authority, in the exercise of the power of eminent domain, for another public use; but a subsequent grant cannot be construed to authorize the destruction or subversion of the former use, unless such appears by express words, or by necessary implication, to be the legislative intent.”

These cases are all prior to those relied upon by the defendants in this behalf.

And the answers of the railroads in the *Holmes* case, already referred to, show, moreover, a considerable appreciation, even at that early day, of the true construction of the statute on which their rights are

founded, and the perils which they would encounter should they undertake utterly to exclude the public from the street use to which the property in question had admittedly been dedicated.

As a last resource the defendants below invoke the doctrine of inherent corporate power to compromise and settle property rights which are the subject of bona-fide dispute or litigation. It is claimed that the contract of 1849 can and should be upheld as an agreement for the compromise and settlement of certain claims against the City of Cleveland to parts of the premises in controversy upon grounds which went to the city's title to the entire tract. One claim of this sort had indeed been so far prosecuted as to be in judgment against the city and to be pending on review in the Supreme Court of Ohio. The contract of 1849 refers to these claims in the concluding paragraph thereof, as already quoted at length.

The power to compromise and settle is doubtless inherent in all corporations as a corollary of the powers to sue and to be sued. There are, however, several objections to the application of this doctrine to the facts of the present case.

In the first place, the rights which the city is claimed to have parted with by virtue of its power to compromise and settle, are not of a merely proprietary nature. They are, in a sense, governmental. The defendants contend, however:

"That a municipality in dealing with public grounds or streets has precisely the same power to protect herself against threatened loss through possible unfavorable results of litigation; precisely the same power to protect herself by compromising a doubtful right, that pertains to an individual deal-

ing with property. Two well-considered cases illustrate the correctness of this proposition."

The first of these cases, *Mills vs. Railroad Co.*, 47 Ia., 66, is not applicable to the distinction thus drawn, for the property there in question, though publicly owned, was neither dedicated nor appropriated to specific public uses.

The other case, *City of St. Louis vs. United States*, 92 U. S., 462, though in point, is shorn of its force by the circumstance that the property, surrendered under the compromise, passed to the government, from which it was derived.

In *Northern Pacific Railway Co. vs. State of Minnesota*, ex rel. Duluth, 208 U. S., 583, 598, on the other hand, the incapacity of municipalities to exercise their implied powers of compromise and settlement in derogation of their governmental functions is illustrated by the statement that

"The exercise of police power cannot be limited by contract for reasons of public policy, nor can it be destroyed by compromise; and it is immaterial upon which the contracts rest, as it is beyond the authority of the state or the municipality to abrogate this power so necessary to the public safety."

But be this as it may, a conclusive objection to the application here of the doctrine of compromise is that no compromise was in fact effected by the contract. The claimants to the property as against the City of Cleveland were not parties to this agreement, and the city neither assured its peace nor its permanent title to any residue of the property by virtue of any covenant in the contract contained. The claimants were still at liberty to prosecute their actions and vindicate their claims

without let or hindrance so far as any bar interposed by this contract was concerned. Clearly a city may not settle a litigated street title by getting someone to buy both street and lawsuit.

Upon the whole record we fail to find any reversible error. It is clear that the railroads have no right to maintain any permanent structures on these premises, except their tracks, and these only so far as they are compatible with the concurrent use of every part of the street and its accretions for public travel.

Recurring, however, to the uncertainty of the judgment below, we exercise our power to modify the same so that it shall read as follows:

“This cause coming on for hearing this day, and all parties hereto having waived a jury and submitted this cause to the court, the same was heard upon the pleadings and the evidence; and upon consideration thereof the court finds that the plaintiff has a legal estate in and is entitled to the immediate possession of the premises described in the petition, subject to all such contract rights as defendants, or any of them, may have under and by virtue of a contract, dated September, 1849, by and between the City of Cleveland, and the Cleveland, Columbus and Cincinnati Railroad Company, which said contract is recorded in Vol. 51, Pages 187, 188, 189 and 190 of the Records of Cuyahoga County, Ohio, and being the same contract referred to in the pleadings of the parties herein, including such rights under and by virtue of said contract as any of said defendants have acquired by succession from or agreement with The Cleveland, Columbus and Cincinnati Railroad Company, its successors or assigns, to lay, maintain and use tracks over and across the portions of said premises hereinafter designated as first, second and third parcels, without thereby or in any manner excluding free use of the whole and every part of said premises by the public for street

purposes and full control and supervision of the same by the proper municipal officers of said city.

“And the court further finds that the defendants have unlawfully kept the plaintiff out of possession of said premises, etc., etc.”

The judgment will proceed as rendered below save that any further mention of said contract rights shall be qualified by the insertion thereunder of the words, as aforesaid.

As so modified, the judgment below is affirmed.

MESSRS. SQUIRE, SANDERS & DEMPSEY,
Counsel for Plaintiffs in Error.

MR. NEWTON D. BAKER,
City Solicitor;

MESSRS. COOK, McGOWAN & FOOTE,
Counsel for Defendants in Error.

13
No. 422. 95

In the Supreme Court of the United States

October Term, 1913.

Office Supreme Court, U. S.

FILED

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THE CLEVELAND AND PITTSBURGH RAILROAD
COMPANY, PENNSYLVANIA COMPANY, THE
CLEVELAND, CINCINNATI, CHICAGO AND ST.
LOUIS RAILWAY COMPANY, AND THE LAKE
SHORE AND MICHIGAN SOUTHERN RAILWAY
COMPANY,

Plaintiffs in Error,

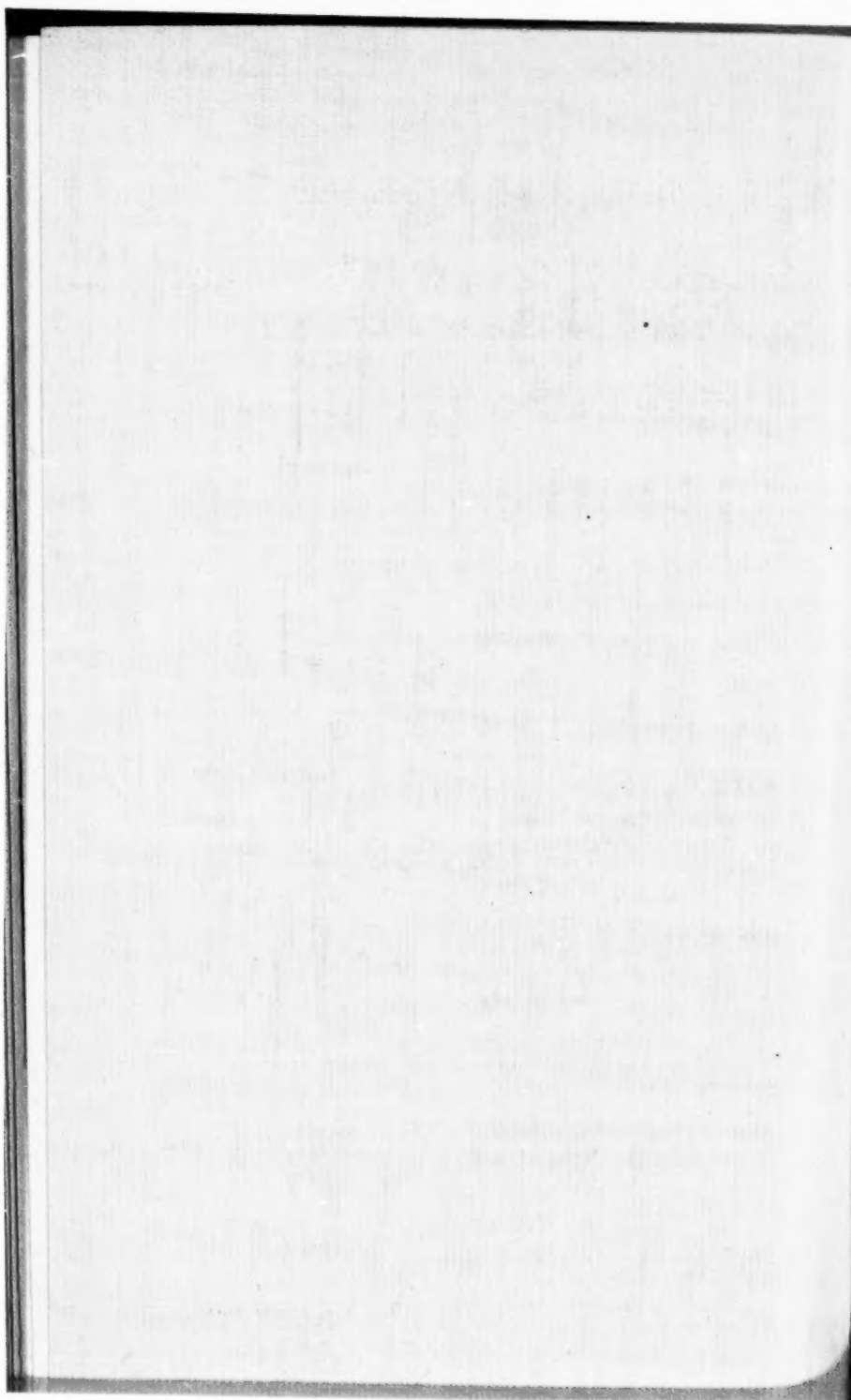
vs.

THE CITY OF CLEVELAND, OHIO,
Defendant in Error.

**BRIEF OF THE CLEVELAND AND PITTSBURGH
RAILROAD COMPANY, PLAINTIFF IN ERROR,
IN OPPOSITION TO MOTION OF THE CITY OF
CLEVELAND, DEFENDANT IN ERROR, TO DIS-
MISS THE WRIT OF ERROR OR TO AFFIRM.**

WM. B. SANDERS,
Attorney of Record for The Cleveland and Pittsburgh
Railroad Company.

HAROLD T. CLARK—On the Brief.



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STATEMENT OF FACTS.

The facts upon which The Cleveland and Pittsburgh Railroad Company, plaintiff in error, bases its right to ask this Court to review the decision of the Supreme Court of Ohio are stated in the assignment of errors, as follows:

Record, pages 667-668:

“One of the sources of title set up by the railroad companies above named as a defense to the claims of the City of Cleveland was a contract dated September 13th, 1849, between the City of Cleveland and The Cleveland, Columbus & Cincinnati Railroad Company, under which all of said railroads derived rights which constitute a complete defense to the claims of the City of Cleveland. Said contract of September 13th, 1849, was made, as alleged and claimed by said railroads, under authority of an act of the Ohio Legislature passed on February 11th, 1848, the same being found in Vol. 46, Ohio Laws, page 40. Subsequent to the making of said contract of September 13th, 1849 (in reliance upon the authority given by said Railroad Act of 1848), there was passed by the Legislature of Ohio in 1852 another act dealing with the same general subject matter, to-wit: Contracts between municipalities and railroad companies as to the occupancy of streets and public grounds. Said Act of 1852 is found in 50 Ohio Laws, page 274.

“Subsequent to the making of and in reliance upon said contract of September 13th, 1849, made pursuant to said Legislative Act passed February 11th, 1848, said railroad companies expended upwards of \$1,000,000 in permanent improvements and betterments upon the property covered by said contract.

“The Supreme Court of Ohio by its judgment in the present case gave such effect to said legislative enactment of 1852 as to impair, by such subsequent legislation, the obligation of said contract of September 13th, 1849, above mentioned, and held that said contract was unenforceable and not a defense to this action, although, as will appear from the final entry in said case, it was specially set up and claimed by said railroad companies that such a decision would impair the rights of said railroads under said contract and constitute a violation of the 10th section of Article 1 of the Constitution of the United States.

"For which errors The Cleveland & Pittsburgh Railroad Company, Pennsylvania Company, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company and The Lake Shore & Michigan Southern Railway Company pray that said judgment of the Supreme Court of the State of Ohio, dated October 22nd, 1912, be reversed and a judgment rendered in their favor, and for costs."

DISCUSSION OF THE MOTIONS TO DISMISS OR AFFIRM.

Counsel for defendant in error have sought in their brief to raise questions under these preliminary motions which can only properly be considered by the Court in a hearing upon the merits.

2 Rose's Code of Federal Procedure, Sec. 2061 (b):

"On a motion to dismiss the Court looks to the regularity of the writ and the question of jurisdiction. Other questions must, in general, await a final hearing."

Sparrows vs. Strong, 70 U. S., 97, at 105:

"And the record shows that the writ has been regularly sued out and returned. This Court therefore has jurisdiction, and it has been repeatedly held in similar cases, that on a motion to dismiss, the Court will look to the regularity of the writ and the fact of jurisdiction. Other questions must, in general, await final hearing."

Amory vs. Amory, 91 U. S., 356:

"Both parties have the right to be heard on the merits and one party cannot require the other to come to such a hearing upon a mere motion to dismiss."

Louisville & Nashville Railroad vs. Melton, 218 U. S., 36, at 49:

"We primarily dispose of a motion to dismiss, which is rested upon the ground that the Federal question relied upon has been so conclusively foreclosed by prior decisions of this Court as to cause it to be frivolous, and therefore not adequate to confer jurisdiction. The contention may not prevail, even although it be admitted that a careful analysis of the previous cases will manifest that they are decisive of this. We say this because, for the purpose of the motion to dismiss, the issue is not whether the Federal question relied upon will be found upon an examination of the merits to be unsound, but whether it is apparent that such question has been so explicitly foreclosed as to leave no room for contention on the subject, and hence cause the question to be frivolous. * * * "

See also—

Minor vs. Tillotson, 1 How., 288.

Hecker vs. Fowler, 4 Miller, 381.

Railroad Company vs. Maryland, 87 U. S., 643, at 645.

Murdock vs. City of Memphis, 87 U. S., 590.

We will confine ourselves herein to a discussion of the matters which properly come before the Court upon a motion to dismiss or affirm and now consider these motions separately.

DISCUSSION OF MOTION TO DISMISS THE WRIT OF ERROR.

Counsel for defendant in error have sought in their brief to give the impression that the urging by plaintiff in error of the prohibition against impairing the obligation of contracts, contained in the 10th section of Article 1 of the United States Constitution, was more or less of an afterthought, and that the Ohio courts never really had a chance to consider this question. Thus on page 29 of their brief, they state:

“The Supreme Court of Ohio simply affirmed the judgment of the Circuit Court of Ohio without opinion, so that in order to determine whether the federal question was decided by the state court, or whether it was necessary to a decision in the state courts, we must examine the opinion of the Circuit Court, now the Court of Appeals (Appendix, page 7), the next inferior court to the Supreme Court of the State. Here again the lack of any foundation for this writ of error is disclosed.”

And they include as part of their brief (see page 5 of the Appendix attached thereto) only the briefest kind of a report of the case in the Supreme Court of Ohio. They fail to call the attention of this court to the fact that the Supreme Court of Ohio embodied in its final entry, affirming the judgment of the court below, a specific finding that the plaintiff in error had specially invoked the protection of the 10th section of Article 1 of the United States Constitution, and that this question had been considered by the court and decided adversely to the plaintiff in error.

This final entry made by the Supreme Court of Ohio on October 22nd, 1912, which will be found in the Record, pages 679-680, reads as follows:

"This cause came on to be heard upon the petition in error, cross-petition in error and transcript of the record of the Circuit Court of Cuyahoga County, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said Circuit Court be, and the same is hereby, affirmed. To which judgment of affirmance the plaintiffs in error, The Cleveland & Pittsburgh Railroad Company and Pennsylvania Company, and the defendants and cross-petitioners in error, The Lake Shore & Michigan Southern Railway Company and The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, except.

"And the Court finds that the plaintiffs in error, The Cleveland & Pittsburgh Railroad Company and Pennsylvania Company, and the defendants and cross-petitioners in error, The Lake Shore & Michigan Southern Railway Company and The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, made claim herein that the contract dated September 13th, 1849, between the City of Cleveland and The Cleveland, Columbus & Cincinnati Railway Company, and appearing in the pleadings and record herein, was a legal, valid instrument, by which the City of Cleveland effectually parted with the right of title to and possession of said property, in dispute in this action; and that the claim of the City herein, sustained by the judgment of the Circuit Court and herein affirmed, was in contravention of the rights of said defendants under said contract of 1849, and impaired the rights of the defendants under said contract, in violation of the Constitution of the United States, particularly the 10th section of Article 1 thereof; which said claims fully appear in the pleadings and record herein, and that such claims so made by the said plaintiffs in error and said defendants and cross-petitioners in error, and so specially set up, were considered by the Court and decided adversely to said plaintiffs in error and said defendants and cross-petitioners in error.

"And it appearing to the Court that there were reasonable grounds for this proceeding in error, it is ordered that no penalty be assessed herein. It is further ordered that the defendants in error recover from the plaintiffs in error their costs herein expended, taxed at \$.

"Ordered, That a special mandate be sent to the Court of Common Pleas of Cuyahoga County to carry this judgment into execution.

"Ordered, That a copy of this entry be certified to the clerk of the Circuit Court of Cuyahoga County, for entry."

It clearly appears, therefore, that the Supreme Court of Ohio did consider whether or not the effect of its decision would be to impair the obligation of the contract of September 13th, 1849.

But it is urged by counsel for the defendant in error that there is a variance between the Federal question presented to the courts of Ohio and that set forth in the assignment of errors filed in this court. They do not contend that plaintiff in error is seeking to invoke the protection of any new constitutional prohibition, because there could be no possible basis for claiming that plaintiff in error ever sought the protection of any section of the United States Constitution other than the 10th section of Article 1, but they do say that a change has been made in the form in which that protection is invoked. Thus, they urge that the plaintiff in error while in the State courts contended that to give effect to the change of judicial decisions on the part of the Supreme Court of Ohio would impair its rights under the contract of 1849, but that now plaintiff in error is relying upon an impairment by an act of the Legislature of Ohio in 1852.

It may be true that plaintiff in error in stating its case in the Ohio courts might have set forth more specifically the reasons why it took its position that—

“to give the effect contended for by the plaintiff to the rulings of the Supreme Court of Ohio, in the following cases, namely:

Railway Co. vs. Defiance, 52 Ohio St., 262.

Railway Co. vs. Elyria, 69 Ohio St., 414.

Railway Co. vs. City, 76 Ohio St., 481.

that such cases hold and decide that the contract of 1849 before referred to was not authorized by the statutes of Ohio then in force, would be to give a retroactive effect to such rulings and to impair contract rights, because thereby the court would now be declaring the contract of 1849 invalid, whereas at the time it was made the statutes in force authorized such contracts, and that to now hold invalid such contracts by the holdings above referred to would be an impairment of the contract rights of the parties to said contract, in contravention and violation of the Constitution of the United States.”

It was not necessary at the time, however, for plaintiff in error to enter in its pleading into a detailed discussion of reasons. The essential thing was to call to the attention of the Ohio courts the fact that plaintiff in error objected strongly to placing any such construction upon the decisions in the cases above mentioned as would impair its rights under the contract of 1849. In view of the final entry made by the Supreme Court of Ohio, hereinbefore quoted, as well as of the opinion rendered by the Circuit Court of Cuyahoga County, Ohio, a copy whereof is attached to the brief of defendant in error, there can be no question that the Ohio courts considered the objection of plaintiff in error with care and decided against it adversely thereon.

In preparing the assignment of errors in connection with taking this case to the Supreme Court of the United States, it has seemed desirable to state more specifically the reasons why plaintiff in error objected to having the courts of Ohio adopt the construction placed by counsel for the City of Cleveland upon the Ohio decisions above mentioned. It was because by so doing the courts would give such effect to the Act of 1852 (50 Ohio Laws, page 174) as would cause said legislative act to impair the obligation of the contract of September 13th, 1849.

It was the contention of the railroads that under the contract of September 13th, 1849, the City of Cleveland parted with its title to what was formerly known as Bath street. In reliance upon the validity of this contract the railroad companies expended upwards of \$1,000,000 in permanent improvements and betterments upon the property covered by the contract. It was the contention of the City of Cleveland that under the construction placed by the Ohio Supreme Court in the cases above mentioned upon the statutes of Ohio governing the making of contracts between municipalities and railroad companies as to the occupancy of streets and public grounds—the Act of 1852 being the act before the court in those cases—the railroads acquired under the contract of September 13th, 1849, only the right to the use and occupancy of Bath street in so far as it did not disturb the public use. The Ohio courts approved the position taken by the city, and, although recognizing the existence of the contract of September 13th, 1849, sought so to limit it in its operation as to seriously impair its value.

In order that a contract may be impaired, it is of course not necessary that it should be wholly done away with.

Walker vs. Whitehead, 83 U. S., 314:

Page 318:

“Any impairment of the obligation of a contract—the degree of impairment is immaterial—is within the prohibition of the constitution.”

Von Hoffman vs. City of Quincy, 4 Wall., 535:

At page 552:

“‘The obligation of a contract’ is the law which binds the parties to perform their agreement. The prohibition has no reference to the degree of impairment. The largest and least are alike forbidden.”

Farrington vs. Tennessee, 95 U. S., 679:

At page 683:

“The constitutional prohibition applies alike to both executory and executed contracts, by whomsoever made. The amount of the impairment of the obligation is immaterial. If there be any, it is sufficient to bring into activity the constitutional provision and the judicial power of this Court to redress the wrong.”

See also—

Planter's Bank vs. Sharp, 6 How., 301.

It is contended by counsel for defendant in error that since the courts of Ohio have placed a certain construction upon the statutes of Ohio, this construction is binding upon the Supreme Court of the United States (see page 18 of their brief).

It is well settled by the following authorities that in a case in which it is claimed that a state by its subsequent legislative act as construed by the State courts has impaired the obligation of a prior contract, the Supreme Court of the United States has the right, even in a case which comes to it upon a writ of error to a State court, to construe the contract and to determine whether its obligation has been impaired.

Ohio Life Insurance & Trust Co. vs. Debolt, 16 How., 416:

This case came before the Supreme Court upon writ of error to the Supreme Court of Ohio.

At pages 431-432:

"This brings me to the question more immediately before the court: Did the constitution of Ohio authorize its legislature, by contract, to exempt this company from its equal share of the public burdens during the continuance of its charter? The Supreme Court of Ohio, in the case before us, has decided that it did not. But this charter was granted while the constitution of 1802 was in force; and it is evident that this decision is in conflict with the uniform construction of that constitution during the whole period of its existence. It appears, from the acts of the legislature, that the power was repeatedly exercised while that constitution was in force and acquiesced in by the people of the State. It was directly and distinctly sanctioned by the Supreme Court of the State in the case of *The State vs. The Commercial Bank of Cincinnati*, 7 Ohio, 125.

"And when the constitution of a State, for nearly half a century, has received one uniform and unquestioned construction by all the departments of the government, legislative, executive, and judicial, I think it must be regarded as the true one. It is true that this court always follows the decision of the State courts in the construction of their own constitution and laws. But where those decisions are in conflict, this court must determine between them. And certainly a construction acted on as undisputed for nearly fifty years by every department of the government and supported by judicial decision, ought to be regarded as sufficient to give to the instrument a fixed and definite meaning. Contracts with the State authorities were made under it. And upon a question as to the validity of such a contract, the court, upon the soundest principles of justice is bound to adopt the construction it receives from the State authorities at the time the contract was made.

“It was upon this ground that the court sustained contracts made in good faith in the State of Mississippi, under an existing construction of its constitution, although a subsequent and contrary construction, given by the courts of the State, would have made such contracts illegal and void. The point arose in the case of Rowan and others vs. Runnels, 5 How., 134. And the court then said, that it would always feel itself bound to respect the decisions of the State courts, and, from time to time as they were made, would regard them as conclusive in all cases upon the construction of their own constitution and laws; but that it ought not to give them a retroactive effect, and allow them to render invalid contracts entered into with citizens of other states, which in the judgment of this court were lawful at the time they were made. It is true, the language of the court is confined to contracts with citizens of other states, because it was a case of that description which was then before it. But the principle applies with equal force to all contracts which come within its jurisdiction.

“Indeed, the duty imposed upon this court to enforce contracts honestly and legally made, would be vain and nugatory, if we were bound to follow those changes in judicial decisions which the lapse of time, and the change in judicial officers will often produce. The writ of error to a state court would be no protection to a contract, if we were bound to follow the judgment which the state court had given, and which the writ of error brings up for revision here. And the sound and true rule is, that if the contract when made was valid by the laws of the state, as then expounded by all the departments of its government, and administered in its courts of justice, its validity and obligation cannot be impaired by any subsequent act of the legislature of the state, or decision of its courts, altering the construction of the law.”

Houston & Texas Central R. R. Co. vs. Texas, 177 U. S., 66, at page 77.

This case came before the Supreme Court of the United States upon a writ of error to the Court of Civil Appeals for the Third Supreme Judicial District of the States of Texas.

Page 77:

"Thus we see that, although the decision of the state court was based upon the ground that the warrants in which these payments were made had been issued in utter violation of the state constitution, and were hence void, and that no payments made with such warrants had any validity, and although this ground of invalidity was arrived at without any reference made to the act of 1870, yet the necessary consequence of the judgment was that effect was thereby given to that act, and in a manner which the company has always claimed to be illegal and unwarranted by the act when properly construed. The company has never accepted such a construction, but on the contrary has always opposed it, and raises the question in this proceeding at the very outset. Upon these facts this court has jurisdiction, and it is its duty to determine for itself the existence, construction and validity of the alleged contract, and also to determine whether, as construed by this court, it has been impaired by any subsequent state legislation to which effect has been given by the court below. *Bridge Proprietors vs. Hoboken Company*, 1 Wall., 116; *University vs. People*, 99 U. S., 309; *Fiske vs. Jefferson Police Jury*, 116 U. S., 131; *New Orleans Water Works Co. vs. Louisiana Sugar Refining Co.*, 125 U. S., 18; *Central Land Co. vs. Laidley*, 159 U. S., 103, 109; *Bacon vs. Texas*, 163 U. S., 207, 216; *McCullough vs. Virginia*, 172 U. S., 102."

Bryan vs. Board of Education, 151 U. S., 639:

This case came before the Supreme Court upon writ of error to the Court of Appeals of the State of Kentucky.
Page 650:

“But the Court of Appeals of Kentucky, regarding substance rather than form, held that the intention of the General Assembly, by the second section of the act of 1861, was to confer upon the Board of Education a power not expressly granted by the act of 1860, namely, the power of removing the seat of the college from Millersburg to any other place in the bounds of the Kentucky Annual Conference. We assume that the act means what the court below said it meant, in view of the constitution of the state. It must, therefore, be taken, in our examination of the question as to the repugnancy of the second section of the act of 1861 to the Constitution of the United States, that it was intended by the General Assembly of Kentucky to give the Board of Education authority to remove the college and its capital and funds from Millersburg to some other place within the bounds of the Kentucky Annual Conference. Did the act, thus interpreted, impair the obligation of any contract that the plaintiffs in error had in reference to that college? It certainly did, if the alleged contract forbade the removal of the institute from Millersburg, except with the assent of the plaintiffs and those in whose behalf they sue. So that it is necessary to inquire as to the existence and effect of the alleged contract. And that question must be determined by this court upon its own judgment, independently of any adjudication by the state court. *Jefferson Bank vs. Skelly*, 1 Black, 436, 443; *Wright vs. Nagle*, 101 U. S., 791, 794; *Louisville & Nashville R. R. Co. vs. Palmes*, 109 U. S., 244, 254, 257; *Louisville Gas Co. vs. Citizens' Gas Company*, 115 U. S., 683, 697; *Vicksburg, etc., Railroad Co. vs. Dennis*, 116 U. S., 665, 667.”

Louisville Gas Co. vs. Citizens Gas Company, 115 U. S., 683:

This case came before the Supreme Court upon writ of error to the Court of Appeals of the State of Kentucky. Pages 696-697:

“The language of this statute is too plain to need interpretation. It formed a part of the charter of the new Louisville Gas Company when incorporated in 1867, and the right of the legislature, by a subsequent act, passed in 1872, to incorporate another gas company to manufacture and distribute gas in Louisville, by means of pipes laid, at its own cost, in the public ways of that city, so far from impairing the obligation of defendant's contract with the State, was authorized by its reserved power of amendment or repeal, unless it be that the act of January 22, 1869, ‘plainly expressed’ the intent that the charter of the new Louisville Gas Company should not be subject to amendment or repeal at the mere will of the legislature. The judges of the State court all concurred in the opinion that no such intent was plainly expressed. As this question is at the very foundation of the inquiry whether the defendant had a valid contract with the State, the obligation of which has been impaired by subsequent legislation, we cannot avoid its determination. Whether an alleged contract arises from State legislation, or by agreement with the agents of a State, by its authority, or by stipulations between individuals exclusively, we are obliged, upon our own judgment and independently of the adjudication of the State court, to decide whether there exists a contract within the protection of the Constitution of the United States. *Jefferson Branch Bank vs. Skelly*, 1 Black, 436; *Wright vs. Nagle*, 101 U. S., 791, 794; *Louisville & Nashville Railroad vs. Palmes*, 109 U. S., 254, 257. After carefully considering the grounds upon which the State court rests its conclusion, we have felt constrained to reach a different result. We are of opinion that the act of 1869 plainly expresses the intention that the company should enjoy the rights, privileges and franchises conferred by the act of 1867, as modified and extended by that of 1869, without its charter being subject to amendment or repeal at the will of the legislature.”

Bacon vs. Texas, 163 U. S., 207, at 219:

"This court, even on writ of error to a State court, will construe for itself the meaning of a statute as affecting an alleged contract where it is claimed that a subsequent statute passed by the State has impaired the obligations of the contract as claimed by the party, and where such subsequent statute has by the judgment of the State court in some way been brought into play and effect been given to some or all of its provisions. In such a case this court construes the contract in order to determine whether the later statute impairs its obligation."

Douglas vs. Kentucky, 168 U. S., 488, at 502:

"The doctrine that this court possesses paramount authority when reviewing the final judgment of a State court upholding a State enactment alleged to be in violation of the contract clause of the constitution, to determine for itself the existence or non-existence of the contract set up, and whether its obligation has been impaired by the State enactment, has been affirmed in numerous other cases."

(Citing numerous authorities.)

DISCUSSION OF MOTION TO AFFIRM.

Paragraph 5 of Rule 6 of the United States Supreme Court, promulgated December 22nd, 1911, provides as follows:

"The Court in any pending cause will receive a motion to affirm on the ground that it is manifest that the writ or appeal was taken for delay only, or that the questions on which the decision of the cause depend are so frivolous as not to need further argument. The same procedure shall apply to and control such motions as is provided for in cases of motions to dismiss under paragraph 4 of this rule."

This rule has been interpreted as follows:

2 Rose's Code of Federal Procedure, Section 2062:

"Where there is sufficient color of right for a motion to dismiss, the court will entertain a motion to affirm. There must, however, be a color of right to dismissal; and where there is no color of right the motion to affirm will not be considered.

"There being sufficient color for the motion to dismiss to allow the court to entertain a motion to affirm, the court will grant the latter where the appeal is taken only for delay, or where the Federal question is clearly frivolous."

3 Foster Federal Practice, page 2115:

"With the motion to dismiss in the Supreme Court may be united a motion to affirm on the ground that, although the record may show that the Supreme Court has jurisdiction it is manifest that the writ or appeal was taken for delay only, or that the question on which the jurisdiction depends is so frivolous as not to need further argument. Such a motion will not be granted unless there is a colorable ground for the motion to dismiss, except in a case where the appeal is clearly frivolous."

Davies vs. Corbin, 113 U. S., 687, at 689:

"The original rule allowing a motion to affirm to be united with a motion to dismiss was promulgated May 8th, 1876, 91 U. S. vii., and in *Whitney vs. Cook*, 99 U. S., 607, decided during the October term, 1878, it was ruled that the motion to affirm could not be entertained unless there appeared on the record at least some color of right to a dismissal. This practice has been steadily adhered to ever since, and, in our opinion, prevents our entertaining the motion to affirm in this case."

See to same effect—

Whitney vs. Cook, 99 U. S., 607.

School District vs. Hall, 106 U. S., 428.

New Orleans vs. Construction Co., 129 U. S., 45.
at page 47.

From the foregoing authorities it is apparent that in determining whether or not it will entertain the motion to affirm the judgment of the lower court, this Court must be influenced by virtually the same considerations as in passing upon the motion to dismiss.

Under the authorities hereinbefore cited in this brief, in the argument upon the motion to dismiss the writ of error, this Court so clearly has jurisdiction that defendant in error has no color of right to a dismissal. The Court should, therefore, not entertain the alternative motion to affirm.

It is therefore urged that the motion to dismiss the writ of error and the motion to affirm should both be denied, and that plaintiff in error should be given an opportunity to argue this case upon its merits.


Respectfully submitted,

WM. B. SANDERS,

Attorney of Record for The Cleveland & Pittsburgh
Railroad Company.

HAROLD T. CLARK,

On the Brief.





**CLEVELAND AND PITTSBURGH RAILROAD
COMPANY *v.* CITY OF CLEVELAND, OHIO.**

ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

No. 95. Motion to dismiss or affirm submitted October 13, 1914.—Decided
November 16, 1914.

In order to bring a case to this court under § 237, Judicial Code, the Federal right must have been set up and adjudicated against the claimant by the judgment of the state court; nor can the contention made and passed upon by the state court be enlarged by assignments of error to bring the case to this court.

An impairment of the obligation of the contract within the meaning

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Argument for Plaintiffs in Error.

of § 10, of Art. I of the Federal Constitution must be by subsequent legislation and not by mere change in judicial decision.

A certificate of the state court cannot bring an additional Federal question into the record, if the record does not otherwise show it to exist. *Marvin v. Trout*, 199 U. S. 212.

THE facts, which involve the jurisdiction of this court under § 237, Judicial Code, to review the judgment of a state court, are stated in the opinion.

Mr. Newton D. Baker and *Mr. John N. Stockwell* for defendant in error in support of the motion:

No Federal question is presented by the assignment of errors, nor was any Federal question specifically set up in the Supreme Court of Ohio.

No change in decision has in fact taken place.

No Federal question was decided in the Supreme Court of Ohio, and the judgment rests upon independent grounds of purely state law sufficient to support it.

Mr. William B. Sanders and *Mr. Harold T. Clark* for plaintiffs in error in opposition to the motion:

The record clearly shows that the Supreme Court of Ohio did consider whether or not the effect of its decision would be to impair the obligation of the contract involved.

It was the contention of the railroads that under the contract of September 13, 1849, the city of Cleveland parted with its title to what was formerly known as Bath Street. In reliance upon the validity of this contract the railroad companies expended upwards of \$1,000,000 in permanent improvements and betterments upon the property covered by the contract. It was the contention of the city that under the construction placed by the Supreme Court of Ohio in the cases mentioned upon the statutes of Ohio governing the making of contracts between municipalities and railroad companies as to the

occupancy of streets and public grounds—the act of 1852 being the act before the court in those cases—the railroads acquired under the contract of September 13, 1849, only the right to the use and occupancy of Bath Street in so far as it did not disturb the public use. The Ohio courts approved the position taken by the city, and, although recognizing the existence of the contract of September 13, 1849, sought so to limit it in its operation as to seriously impair its value.

In order that a contract may be impaired, it is not necessary that it should be wholly done away with.

Where it is claimed that a State by its subsequent legislative act as construed by the state courts has impaired the obligation of a prior contract, the Supreme Court of the United States has the right, even in a case which comes to it upon a writ of error to a state court, to construe the contract and to determine whether its obligation has been impaired.

In support of these contentions, see *Amory v. Amory*, 91 U. S. 356; *Bacon v. Texas*, 163 U. S. 207, 219; *Bryan v. Board of Education*, 151 U. S. 639, 650; *Davies v. Corbin*, 113 U. S. 687; *Douglas v. Kentucky*, 168 U. S. 488, 502; *Farrington v. Tennessee*, 95 U. S. 679, 683; 3 Foster's Fed. Prac., p. 2115; *Hecker v. Fowler*, 4 Miller, 381; *Houston & Tex. Cent. R. R. Co. v. Texas*, 177 U. S. 66, 77; *Louis. & Nash. R. R. v. Melton*, 218 U. S. 36, 49; *Louisville Gas Co. v. Citizens' Gas Co.*, 115 U. S. 683, 696; *Minor v. Tillotson*, 1 How. 288; *Murdock v. Memphis*, 20 Wall. 590; *New Orleans v. Construction Co.*, 129 U. S. 45; *Ohio Life Ins. Co. v. Debolt*, 16 How. 416, 431; *Planters' Bank v. Sharp*, 6 How. 301; *Railroad Co. v. Maryland*, 20 Wall. 643; 2 Rose's Code Fed. Proc., §§ 2061b, 2062; *School District v. Hall*, 106 U. S. 429; *Sparrow v. Strong*, 3 Wall. 97, 105; *Von Hoffman v. Quincy*, 4 Wall. 535, 552; *Walker v. Whitehead*, 16 Wall. 314, 318; *Whitney v. Cook*, 99 U. S. 607.

Memorandum opinion by MR. JUSTICE DAY, by direction of the court.

The original action was brought by the city of Cleveland, Ohio, to oust the railroad companies, now plaintiffs in error, from the exclusive possession of Bath Street, in that city. A number of defenses were set up by the railroad companies, but we are concerned only with the alleged deprivation of Federal right, resulting from the decision of the state court. In the court of original jurisdiction, the Common Pleas, judgment was rendered in favor of the city. Upon proceedings in error, that judgment was affirmed by the state Circuit Court, and in the Supreme Court of the State of Ohio the judgment of the Circuit Court was affirmed without opinion.

It is now undertaken to bring the case here, because of alleged violation of rights under the Federal Constitution arising by virtue of § 10 of Article I of that instrument, preventing the impairment of contract rights by subsequent legislation.

In order to bring a case here under § 237 of the Judicial Code (formerly § 709 of the Revised Statutes of the United States), it is well settled that the Federal right must have been set up and adjudicated against the claimant by the judgment of the state court. It is equally well settled that the contention made and passed upon in the state court cannot be enlarged by assignments of error made to bring the case to this court. This proposition is too well settled to need discussion. *National Bank v. Kentucky*, 9 Wall. 353; *Re Spies*, 123 U. S. 131; *Zadig v. Baldwin*, 166 U. S. 485; *Oxley Stave Company v. Butler County*, 166 U. S. 648; *Waters-Pierce Oil Company v. Texas*, 212 U. S. 112; *Mallors v. Commercial Loan & Trust Company*, 216 U. S. 613; *Appleby v. Buffalo*, 221 U. S. 524.

It is equally well settled that an impairment of the obligation of the contract, within the meaning of the

Federal Constitution, must be by subsequent legislation, and no mere change in judicial decision will amount to such deprivation. *Ross v. Oregon*, 227 U. S. 150, 161; *Moore-Mansfield Construction Company v. Electrical Installation Company*, 234 U. S. 619, 624; and cases cited on p. 625. An examination of the record shows that the Federal right set up in the Court of Common Pleas, and considered in the Circuit Court, the latter judgment being affirmed by the Supreme Court without opinion, concerned an alleged change of decision in the Supreme Court of Ohio, construing a statute concerning the contract upon which the railroad companies relied, the effect of which, it was alleged, would be to do violence to the contract clause of the Federal Constitution. It was not set up that subsequent legislation had impaired the obligation of the contract of the railroad companies. Therefore, in the light of the decisions of this court above quoted, no Federal right was alleged to be impaired within the meaning of the Constitution of the United States, and no such right was passed upon in the decisions of the courts.

The contention is made that the presence of the Federal right set up and denied as violative of this clause of the Constitution is shown by the certificate of the Supreme Court, contained in its journal entry affirming the judgment of the Circuit Court. An examination of the certificate, however, does not show that any contention that contract rights were impaired by subsequent state legislation, was passed upon adversely to the railroad companies, but shows only that the contention was that the claim of the city, in respect to the contract of September 13, 1849, sustained by the judgment of the Circuit Court, and affirmed by the Supreme Court, was in contravention of the defendants' rights under said contract, and impaired their rights under said contract, in violation of the Constitution of the United States, particularly the

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Syllabus.

tenth section of Article I thereof; "which said claims fully appear in the pleadings and record herein, and that such claims were considered by the court and decided adversely to said plaintiffs in error." The character of the claims thus made we have already described. Moreover, a mere certificate of this character cannot bring an additional question into the record, where the record does not otherwise show it to exist. *Marvin v. Trout*, 199 U. S. 212.

It follows that the writ of error must be dismissed.

MR. JUSTICE HOLMES took no part in the consideration and decision of this case.